

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-6045

~~75-6045~~

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff-Appellee,

vs.

RALPH T. IANNELLI, HOWARD FROST,
JOHN SURGENT,

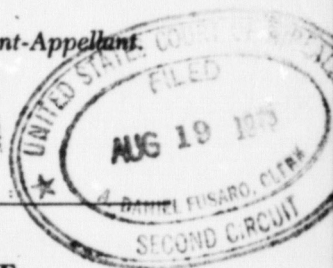
Defendants,

JOHN SURGENT,

Defendant-Appellant.

**JOINT APPENDIX FOR
DEFENDANT-APPELLANT**

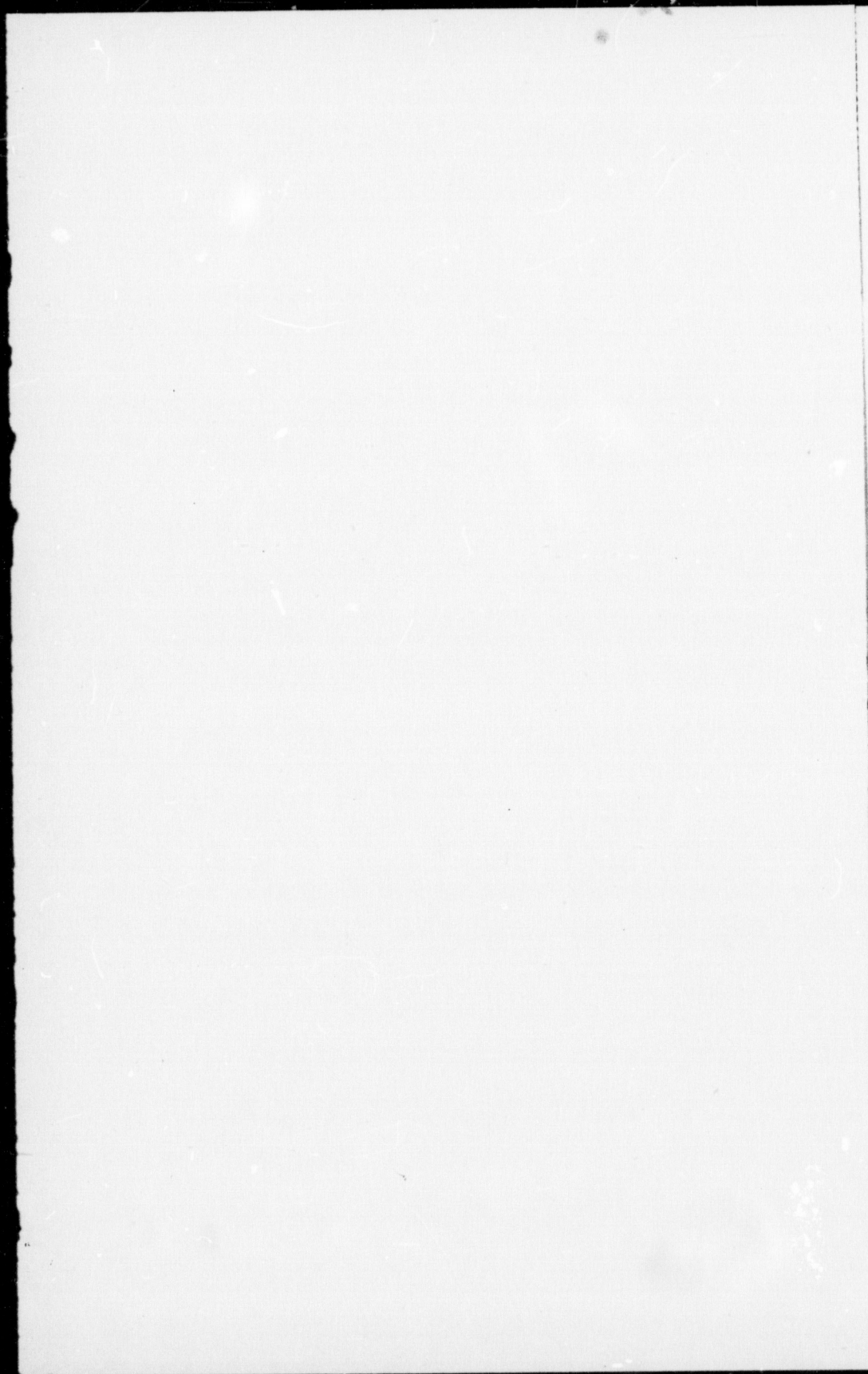
JAY D. FISCHER,
Attorney for Defendant-Appellant,
225 W. 34th Street,
Suite 2208,
New York, New York 10001
(212) 734-8185



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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

—against—

RALPH T. IANNELLI,
HOWARD FROST,
JOHN SURGENT,

Defendants.

Complaint

Plaintiff, Securities and Exchange Commission ("Commission") for its Complaint herein alleges:

1. Defendants Ralph T. Iannelli, Howard Frost and John Surgent, in the Southern District of New York and elsewhere, have been engaged, are engaged and will, unless enjoined, continue to engage in its acts and practices which constitute and aid and abet violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78j(b) and Rule 17 C.F.R. 240.10b-5 thereunder.

2. The Commission, pursuant to Section 20(b) of the Securities Act, 15 U.S.C. 77t(b) and Section 21(e) of the Exchange Act, 15 U.S.C. 78u(e), brings this action to enjoin such acts and practices.

3. This Court has jurisdiction of this action under Section 22(a) of the Securities Act, 15 U.S.C. 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. 78aa.

4. Pursuant to authority conferred upon the Commission by Sections 10(b) and 23(a) of the Exchange Act, 15 U.S.C. 78j(b) and 78w(a), the Commission has promulgated Rule 17 C.F.R. 240.10b-5 thereunder; said rule was in effect at all times mentioned herein and is now in effect.

DEFENDANTS

5. Ralph T. Iannelli ("Iannelli") was a registered representative at Pressman, Frohlich & Frost, Inc. ("Pressman") from March 5, 1973 to October 4, 1973. Pressman at all times relevant herein was a broker-dealer in securities and registered with the Commission pursuant to the provisions of Section 15 of the Exchange Act, 15 U.S.C. 78o, a member of the New York Stock Exchange, Inc. and other national securities exchanges and a member of the National Association of Securities Dealers, Inc. He resides at 370 Lennox Avenue, South Orange, New Jersey.

6. Howard Frost ("Frost") was, during the relevant period of time referred to herein, the president of Pressman and Iannelli's supervisor at the firm. Frost had the responsibility to supervise the trading and sales activities at Pressman. He resides at 10 Syme Avenue, West Orange, New Jersey.

7. John Surgent ("Surgent") is an attorney admitted to practice law in the State of New Jersey. He resides at 6 Horizon Road, Fort Lee, New Jersey.

FIRST CAUSE OF ACTION

(Section 17(a) of the Securities Act, 15 U.S.C. 77q (a) and Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 17 C.F.R. 240.10b-5 thereunder—
Fraud in the Offer, Purchase and Sales of Securities)

8. Plaintiff Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 7 of this Complaint.

9. From on or about September 1, 1973 to the date hereof, in the Southern District of New York and elsewhere, the defendants as specified below, singly and in concert, directly and indirectly, in connection with the offer, purchase and sale of the common stock of Omni-Rx Health Systems, Inc. ("Omni-Rx"), by the use of the means and instruments and instrumentalities of transportation or communication in interstate commerce and of the mails, have been and are employing devices, schemes and artifices to defraud; obtaining money and property by making untrue statements of material facts, or omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and engaging in acts, practices and courses of business which have operated, are operating and will operate as a fraud and deceit upon the purchasers and prospective purchasers of Omni-Rx common stock, in that; among other things:

(a) defendant Iannelli effected a series of transactions in the common stock of Omni-Rx by purchasing for 25 customers approximately 95,000 shares of such stock without the authorization of said customers and at a time when he knew or should have known that no payment would be made for the securities so purchased, thereby creating actual and/or apparent active trading in such security and causing a rise in the price of such security from approximately \$6 per share on September 7, 1973 to a price of \$12 per share on October 2, 1973, for the purpose of inducing the purchase of Omni-Rx common stock by others;

(b) defendant Frost aided and abetted the violative conduct of defendant Iannelli, as described above in sub-

paragraph (a), in that he failed to institute, promulgate and maintain adequate supervisory procedures which would or could prevent the type of activity in which defendant Iannelli engaged at a time when defendant Frost knew or should have known of such activity; and

(c) defendant Surgent aided and abetted the violative conduct of defendant Iannelli, as described herein in that he caused approximately 22,000 shares of the common stock of Omni-Rx, which shares had been previously ordered without authorization by defendant Iannelli on behalf of other customers, to be purchased by defendant Iannelli at a time when defendant Surgent knew, or should have known, that such transactions would and did aid the manipulative activities of defendant Iannelli.

WHEREFORE, plaintiff Commission respectfully demands:

I. A preliminary injunction and a final judgment of permanent injunction enjoining defendants Iannelli, Frost and Surgent, their partners, nominees, agents, employees, servants, attorneys, successors, assigns, and those persons in active concert or participation with them, and each of them, from directly and indirectly, in connection with the offer, purchase or sale of the common stock of Omni-Rx, or any other security, by use of the means and instruments of transportation or communication in interstate commerce, or of the mails, or of any facility of any national securities exchange:

(a) employing any device, scheme or artifice to defraud;

(b) obtaining money or property by means of, or otherwise making any untrue statements of material facts or omitting to state a material fact necessary in order to make

the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person including, but not limited to, (1) effecting, alone or with one or more other persons, a series of transactions in the common stock of Omni-Rx, or any other security, creating actual or apparent active trading in such security or raising or depressing the price of such security for the purpose of inducing the purchase or sale of such security by others, and (2) entering orders for the purchase of the common stock of Omni-Rx, or any other security at a time when they know, or have reason to know, that no payment will be made for such purchases.

II. Such other and further relief as the nature of the case may require and the Court may deem just and proper.

Respectfully submitted,

/s/ William D. Moran
WILLIAM D. MORAN
Regional Administrator
Attorney for Plaintiff
SECURITIES AND
EXCHANGE COMMISSION
26 Federal Plaza
New York, New York 10007
Telephone No. 212-264-1636

Of Counsel:

WILLIAM NORTMAN
JEFFREY H. TUCKER
BARRY J. MANDEL

Dated: New York, New York
August 6, 1974

Answer of Defendant John Surgent

Defendant, John Surgent, answers the complaint of plaintiff, Securities and Exchange Commission and says:

1. He denies paragraph 1 as to himself and gives no response as to defendants Ianelli and Frost, such not being necessary.

2. He admits paragraphs 2, 3 and 4.

3. Paragraphs 5 and 6 are not directed against defendant, Surgent and therefore no response is necessary.

4. He admits paragraph 7.

5. He restates and incorporates by reference each and every response-contained in paragraphs 1 through 4 of this Answer.

6. He denies paragraph 9.

7. Paragraphs 9a and 9b are not directed against defendant, John Surgent, and therefore no response is necessary.

8. He admits the following transactions with respect to Omni-Rx stock:

a) On September 26, 1973, the defendant, Howard Frost, through his agent, defendant Ralph Iannelli, confirmed buys to London Corporation, a New Jersey corporation, of which defendant, John Surgent, is President, of shares of Omni-Rx stock in the following denominations: 1900 shares at 6.875; 600 shares at 7.5; and 1000 shares at 7.5. This written confirmation also acknowledged receipt of a check in the amount of \$25,000 from London

Corporation in payment of said stock and sale of 3500 shares of Omni-Rx Health Systems at 10.5.

b) On September 28, 1973, the defendant, Iannelli confirmed buys to London Corporation of 2,000 shares of Omni-Rx Health Systems at 8 and 2,000 shares of Omni-Rx Health Systems at 8% and also confirmed sells of said 4,000 shares of Omni-Rx Health Systems at 10.5.

c) On October 1, 1973, defendant, Iannelli, reconfirmed the the sale to London Corporation of 4,000 shares of Omni-Rx Health Systems at 11 net instead of the 10.5 price previously given, the defendant, Surgent having given a check in the amount of \$32,250.00.

d) On October 2, 1973, Surgent & Surgent received confirmation from defendant, Ianelli, of the purchase of 3,750 shares of Omni-Rx Health Systems at 9% and 7,000 Omni-Rx at 10.5. Said written confirmations also reflected the sale of 10,750 shares of Omni-Rx at 12 net. Computer confirmations from the clearing house, Loeb Rhodes & Co. were received for the purchases of this stock, but not the sales.

e) On October 1, 1973, Surgent & Surgent received confirmation from defendant, Ralph Ianelli of the purchase of 3,000 shares Omni-Rx at 8.5 and the sale of same at 11 net. Again, computer confirmations for the purchase of said stock was received but not the sale.

f) "PFC" Premium Finance Corporation, of which John Surgent is President, received written confirmation from defendant, Ralph Iannelli, of purchase of 7,000 shares of Omni-Rx at 9.25. Said confirmation also reflected sale of said 7,000 shares at 11.25 net. Confirmation was also received for 2,500 shares of Omni-Rx at 12.25 which were not ordered, but he denies that he in any way knew or should have

8a

Answer

known of the manipulative activities of defendant, Ianelli, nor that he aided and abetted his violative conduct in any manner.

/s/ John W. Surgent
JOHN W. SURGENT
246 Clifton Avenue
Clifton, New Jersey 07011
201-777-7075

Letter dated September 16, 1974

Clerk, United States District Court
Southern District of New York
Foley Square
New York, New York 10007

Re: Securities and Exchange Commission against
Ralph T. Iannelli, Howard Frost, John Surgent

Dear Sir:

Enclosed please find the following for filing with your office:

- Original and 1 copy Answer of Defendant, John Surgent
- Original and 1 copy Memorandum of Law in Support of Defendant Surgent's Opposition to Plaintiff's Motion for a Preliminary Injunction
- Original and 1 copy Affidavit of Defendant, John Surgent, in Opposition to Motion for Preliminary Injunction.

Please mark copy of each of these documents "FILED" and return same to our office.

Very truly yours,
JOHN W. SURGENT

JWS/jlc

cc: Hon. Constance Baker Motley, U.S. District Court,
Room 2001, Southern District of N.Y.,
Foley Sq., N.Y., N.Y. 10007

Jeffrey H. Tucker, Esq., Chief Attorney, Br. #4,
Securities and Exchange Comm.,
26 Federal Plaza, N.Y., N.Y. 10007

Notice of Motion

SIRS:

PLEASE TAKE NOTICE that upon the Complaint filed on August 6, 1974, the affidavit of Meyer Goldman, sworn to on August 8, 1974 and all other papers and exhibits in support thereof, the undersigned will move this Court in Room 35, United States Courthouse, Foley Square, City of New York on the 27th day of August, 1974 at 9:30 o'clock in the noon of that day or as soon thereafter as counsel can be heard for an Order of Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the defendant John Surgent, his partners, nominees, agents, employees, servants, attorneys, successors, assigns and those persons in active concert or participation with him, and each of them, from further violations of Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(a) and Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b) and Rule 17 C.F.R. 240.10b-5 thereunder; and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to General Rule 9(c)(2) of this Court, you are required to serve upon the undersigned all opposing affidavits and answering memoranda at least three (3) days before the return day.

Dated: New York, New York
August 9, 1974

Respectfully submitted,

/s/ William D. Moran
WILLIAM D. MORAN

Regional Administrator
Attorney for Plaintiff
SECURITIES AND
EXCHANGE COMMISSION
26 Federal Plaza
New York, New York 10007
Telephone No. 212-264-1636

TO: Ralph T. Iannelli
370 Lennox Avenue
South Orange, New Jersey

Howard Frost
10 Syme Avenue
West Orange, New Jersey

John Surgent
6 Horizon Road
Fort Lee, New Jersey

AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION
(Annexed to Foregoing Notice of Motion)

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

MEYER GOLDMAN, being duly sworn, deposes and says:

1. I am employed as a Supervisory Investigator by the Securities and Exchange Commission ("Commission") in its New York Regional Office ("NYRO").

2. I submit this affidavit in support of the Commission's motion for a preliminary injunction against the defendant John Surgent ("Surgent")¹ to enjoin him from further violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77q(a) and Section 10(b) of the Securities Exchange Act of 1934, ("Exchange Act"), 15 U.S.C. 78j(b), and Rule 17 C.F.R. 240.10b-5 thereunder.

3. I am familiar with the facts alleged in the Commission's complaint and the facts set forth hereinafter having participated in the investigation of this matter. I make this affidavit on information and belief, the source of my information and the grounds for my belief being documents in the possession of the Commission which relate to this matter, documents and records in the possession of certain of the defendants and other persons, interviews with

¹ On August 7, 1974 defendants Ralph T. Iannelli ("Iannelli") and Howard Frost ("Frost") consented to final judgments of permanent injunction in this matter. These consents have been submitted for the Court's signature. Nevertheless, in order to enable the Court to better understand the facts of this case reference is made herein to the activities of the consenting defendants.

defendants and other persons, and conversations with other members of the staff having familiarity with this matter.

DEFENDANTS

4. Iannelli was employed as a registered representative at Pressman, Frohlich & Frost, Inc. ("Pressman"), a New York broker-dealer^{1a} from March 5, 1973 to October 4, 1973. He resides at 370 Lenox Avenue, South Orange, New Jersey.

5. Frost has been employed in the securities business since 1955. In 1967 he became president of Pressman and held that position throughout the relevant period referred to herein. Frost resides at Ten Syme Avenue, West Orange, New Jersey.

6. Surgent is an attorney-at-law admitted to practice in the State of New Jersey. He maintains offices at 888 Ramapo Valley Road, Mahwah, New Jersey. Surgent resides at 6 Horizon Road, Fort Lee, New Jersey.

BACKGROUND AND INTRODUCTION

7. On December 21, 1972 the Commission declared effective a registration statement for sale to the public of 200,000 shares of the common stock of Omni-Rx Systems, Inc. ("Omni-Rx") at a price of \$7.50 per share. The offering, which was conducted on a firm commitment basis, was underwritten through a syndicate managed by Frank & Drake, Inc. ("F & D"), a now defunct New York broker-dealer in securities. No prior public offering had ever been conducted on behalf of Omni-Rx.

1a. Pressman at all times relevant herein was registered with the Commission as a broker-dealer in securities, a member of the New York Stock Exchange, Inc. and other national securities exchanges and a member of the National Association of Securities Dealers, Inc.

8. During the Omni-Rx public offering, Iannelli was employed at F & D and purchased approximately 10,000 shares of Omni-Rx stock on behalf of certain of his customers.

9. Following the public offering, Omni-Rx stock has traded in the over-the-counter market through the inter-dealer quotation media of the "pink sheets"² and "NASDAQ."³ On October 5, 1973 the Commission suspended trading in Omni-Rx stock for a period of ten days as a result of the stock's erratic price movement. At the end of the ten day period, the trading suspension was lifted.

10. Prior to the trading suspension, during September 1973, the defendant Iannelli effected fictitious transactions in the common stock of Omni-Rx with a view to inducing the purchase of such stock by public investors (paragraphs 11 to 24 below). This activity was facilitated and aided and abetted by the efforts of the defendant Surgent (paragraphs 25 to 33 below).

Violations of the Anti-Fraud Provisions

(Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 17 C.F.R. 240.10b-5 thereunder)

I. The Role of Iannelli

11. In May of 1973, Pressman became a market maker in the over-the-counter trading of Omni-Rx common stock.

2. The "pink sheets" are a service of the National Quotation Bureau, Inc., a private organization which publishes and circulates such sheets each day among its subscribers. The pink sheets contain quotations which reflect the price at which brokers and dealers are willing to purchase and sell over-the-counter securities.

3. "NASDAQ" stands for the National Association of Securities Dealers Automated Quotation System. It is an automated system whereby brokers and dealers project prices at which they are willing to purchase and sell over-the-counter securities.

During the relevant period referred to herein, Pressman utilized "NASDAQ" to enter bid and ask price quotations for Omni-Rx stock.

12. From May 1, 1973 through September 6, 1973, Iannelli purchased approximately 15,000 shares of Omni-Rx stock on behalf of his customers. In each of these transactions, the majority of which were solicited, the customer authorized Iannelli to purchase the shares. During this four month period, the market price of Omni-Rx stock gradually rose from approximately \$2 per share to approximately \$6 per share.

13. Thereafter, from September 7, 1973 through October 3, 1973 Iannelli caused approximately 95,000 shares of Omni-Rx stock, almost 50% of the public float (those shares available for public trading), to be purchased for the accounts of 25 customers. Each of these transactions, though confirmed by mail, was effected without the knowledge or authorization of the customer for whose account the shares were purchased. During this one month period, the market price of Omni-Rx common stock rose sharply from approximately \$6 per share to approximately \$12 per share. The unauthorized purchases are set forth, on a daily basis, in the chart annexed hereto as Exhibit A.

14. During the period of time that Iannelli effected these unauthorized transactions, he knew or was in a position to know that no payment would be made for such purchases and, in fact, no such payment was ever made.

15. The unauthorized purchases effected by Iannelli on behalf of the 25 customers who, in fact, neither ordered nor authorized such purchases, created an apparent, though artificially engendered demand for the common stock of Omni-Rx.

16. In order to meet this artificial demand, Pressman entered increasingly higher bids into NASDAQ thereby attracting into the trading market increasingly larger amounts of Omni-Rx shares.

17. The supply of shares being offered for sale in the market as a result of the increasingly higher bids being entered into NASDAQ were purchased by Pressman for its own trading account and, in turn, sold, in fulfillment of the fictitious orders, to Iannelli's customers. Indeed, from September 7, 1973 through October 3, 1973 Pressman accounted for approximately 60% of the transactions effected in Omni-Rx stock despite the presence on NASDAQ of an average of eight other broker-dealers.

18. The fictitious activity in Omni-Rx stock during September 1973, generated commissions of approximately \$60,000 for Iannelli, and commissions and trading profits of approximately \$80,000 for Pressman within a one month period of time.⁴

19. The actual and apparent active trading generated by Iannelli and the resultant price rise was effected for the primary purpose of inducing persons to purchase Omni-Rx stock at the artificially inflated prices.

II. *The Participation of Surgent in the Manipulation of Omni-Rx stock*

20. The unauthorized trades effected by Iannelli were rejected by most of the customers in whose names they had been entered. In order to conceal these rejections, Iannelli embarked upon two courses of conduct; he procured extensions of time for the customers to allegedly make payment and enlisted the assistance of Surgent.

4. When Iannelli's manipulated scheme was finally unveiled in early October 1973, Pressman ultimately sustained a loss of approximately \$900,000 and Iannelli only realized approximately \$10,000 out of the commissions he had "earned."

A. The Extensions of Time

21. The stock, which was placed by Iannelli into customer accounts without authorization, was purchased for these accounts from Pressman. Pressman had, in turn, purchased the shares from other broker-dealers. Accordingly, Pressman paid the other broker-dealers for the securities and, if the customers disavowed the purported purchases, Pressman would have had to retain the stock.

22. In order to avoid Pressman's unwilling retention of the Omni-Rx stock purchased without authorization and the probable uncovering of his illicit activity upon the customers' refusal to pay for the unordered shares, Iannelli procured extensions of time⁵ for payment to be made on the purchases.

23. These extensions were obtained in the anticipation that when the customers, for whose accounts Iannelli had effected unauthorized trades, noted the rise in the price of Omni-Rx stock (caused by Iannelli's excessive orders), they would change their minds and consummate their Omni-Rx stock purchases at the original, lower price.

24. Despite the rise in the price of Omni-Rx stock, all of the customers on whose behalf Iannelli had purchased stock without authorization disavowed the purchases, thus forcing Iannelli to seek the assistance of Surgent as a "substitute" purchaser.

B. The Assistance of Surgent

25. Iannelli informed Surgent on or about September 26, 1973 of the availability of Omni-Rx stock and of the

5. Generally speaking, Regulation T, promulgated pursuant to Section 7(c) of the Exchange Act, 15 U.S.C. 78g(c), provides that purchases of securities effected in cash accounts (as opposed to margin accounts) must be paid for within seven days. Under certain circumstances this seven day period may be extended for additional seven day periods. In the absence of such extensions the broker must sell out the securities which had been purchased for the customer and for which the customer has failed to pay.

fact that he (Iannelli) had purchased such stock without authorization on behalf of other customers. Surgent was also told that such stock could be purchased for the prices at which the stock had originally been improperly ordered by Iannelli.

26. Surgent agreed to purchase large blocks of Omni-Rx shares for the prices at which the stock had originally been improperly ordered on the condition that the shares could be resold simultaneously with each purchase, thereby affording Surgent an instant profit of the difference between the price at which the stock had originally been ordered and the prevailing market price on the date of the Surgent purchase and sale.⁶

27. In accordance with this agreement Surgent entered the following orders in Omni-Rx stock:

(a) On September 26, 1973 the purchase, at varying prices approximating \$7 per share and sale at approximately \$10½ per share, of 3500 shares on behalf of London Corporation ("London") a New Jersey company of which Surgent is president.

(b) On September 28, 1973, the purchase of 2,000 shares at \$8 per share and 2,000 shares at \$8½ per share and sale of all 4,000 shares at \$10½ per share on behalf on London.

(c) On October 1, 1973, the purchase at \$8½ per share and sale at \$11 per share of 3,000 shares on behalf of Surgent and Surgent ("Surgent Firm"), a New Jersey law partnership of which Surgent is a member.

(d) On October 2, 1973, the purchases of 3750 shares at \$9 per share and 7,000 shares at \$10½ per share and

6. Had the orders been consummated, Surgent would have realized a profit of approximately \$50,000 on an investment of \$25,000. The \$25,000 paid by Surgent to Pressman was for the purchases of September 26, 1973. No further payments were made for any other purchases.

sale of all 10,750 shares at \$12 per share on behalf of the Surgent Firm.

28. To conceal the adoption by Surgent of shares previously purchased by Iannelli without authorization, Surgent and Iannelli prepared four letters falsely stating that confirmations regarding the London and Surgent Firm transactions had not been mailed earlier as a result of a computer error. These letters are attached herewith as Exhibit B.

29. The purchases by Surgent lent support to Iannelli's scheme as he (Iannelli) was able to transfer the Omni-Rx shares previously ordered without authorization and on which payment extensions were expiring, into the accounts of Surgent controlled entities.

30. This assistance, however, was only of a temporary nature (the seven days between trade date and settlement date) as Surgent's concurrently placed sales orders left Iannelli still looking for a permanent "home" for the shares. As described below in paragraph 31, Iannelli's dilemma caused him to refrain from effecting certain of Surgent's sales orders.

31. Iannelli effected all of the purchase orders entered by Surgent, described above in paragraph 27. However, because of Iannelli's inability to procure new buyers, no sell orders, as requested by Surgent, with the sole exception of the sale of the 3,500 shares of Omni-Rx stock on behalf of London, described in subparagraph (a) of paragraph 27 above, were ever effected by Iannelli.

32. Surgent, a sophisticated investor with previous experience in the purchase and sale of securities and an attorney who has practiced some securities law, knew, or should have known that by arranging for the adoption of the previously unauthorized purchases executed by Ian-

nelli he was providing Iannelli with a "temporary home" for these Omni-Rx shares and thereby enabling Iannelli to conceal the existence of his manipulative scheme.

33. Indeed, as noted in Exhibit A, Iannelli effected unauthorized purchases of approximately 27,900 shares, in excess of 25% of all of the unauthorized orders subsequent to September 26, 1973, the date upon which Surgent first provided assistance to Iannelli.

NEED FOR RELIEF

34. Surgent remains in control of the Surgent Firm and London without any change or limitation in his ability to effectuate securities transactions on their behalf as well as his own.

35. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, it is respectfully requested that this Court issue an order preliminarily enjoining the defendant John Surgent from further violations of the anti-fraud provisions of the federal securities laws.

/s/ Meyer Goldman
MEYER GOLDMAN

Sworn to before me this day of August 1974.

/s/ Douglas P. Jacobs
Notary Public

EXHIBIT A
(Annexed to Foregoing Affidavit)

OMNI-RX HEALTH SYSTEMS, INC.
UNAUTHORIZED PURCHASES EFFECTED
ON BEHALF OF THE CUSTOMERS OF
RALPH T. IANNELLI

Date	No. of Shares	Approximate Price
9/7/73	1,900	6-½
9/10/73	4,500	7
9/12/73	2,000	7-¾
9/14/73	9,450	8-¾
9/17/73	4,000	9-½
9/18/73	6,300	9-¾
9/19/73	6,000	10-¼
9/20/73	11,500	10-¾
9/24/73	2,000	10-¾
9/25/73	7,300	11
9/26/73	12,500	11
9/27/73	4,600	11
9/28/73	10,300	11-½
10/1/73	5,500	11-¾
10/2/73	2,500	12
10/3/73	5,000	11-¾
	<hr/> 95,350	

LETTER DATED SEPTEMBER 26, 1973
(Annexed to Foregoing Notice of Motion)

London Corporation
992 Clifton Avenue
Clifton, New Jersey

Dear Gentleman:

This will serve as your confirmation of the following trades, because of a computer error your confirmation will follow in a few days. The confirmed buys are as follows:

1900 shares of Omni-Rx Health Systems at 6.875

600 shares of Omni-Rx Health Systems at 7.5

1000 shares of Omni-Rx Health Systems at 7.5

The confirmed sells are as follows:

3500 shares of Omni-Rx Health Systems at 10.5

We hereby guarantee payment from the sale of these securities. We also acknowledge receipt of a check for \$25,000.00.

Sincerely,

/s/ Ralph Thomas Iannelli
RALPH THOMAS IANNELLI
Registered Representative

UNDATED LETTER FROM
RALPH T. IANNELLI TO LONDON CORP.
(Annexed to Foregoing Notice of Motion)

London Corp.
992 Clifton Ave.,
Clifton, New Jersey 07013

Dear Gentleman:

Due to computer error you have not receive your confirmation for the purchase of 4000 shares Omni-Rx Health Systems (2000 at 8; 2000 at 8%). This will also serve to confirm as per your instructions we have sold the above stock in the open market at 10½ net. Confirms of both transactions will follow shortly.

We hereby guarantee to you payment of the proceeds of the sale on settlement date, Oct. 5, 1973.

Sincerely,

/s/ Ralph T. Iannelli

LETTER DATED OCTOBER 1, 1973
(Annexed to Foregoing Notice of Motion)

Surgent & Surgent
992 Clifton Avenue
Clifton, New Jersey

Dear Gentleman:

This will acknowledge that due to computer error you have not received you confirmation for 3000 shares Omni-Rx Health at 8½ net. This will also serve to confirm that this stock was sold at 11 net on Oct. 1, 1973, and we hereby guarantee payment if proceeds on settlement, to your account.

Sincerely,

/s/ Ralph T. Iannelli
For Pressman, Frohlich & Frost

LETTER DATED OCTOBER 2, 1973
(Annexed to Foregoing Notice of Motion)

Surgent & Surgent
992 Clifton Ave.,
Clifton, New Jersey

Gentleman:

This will confirm that due to computer error you have not received your confirmations for the following trades:

- 1) 3750 Omni-Rx Health 9% net.
- 2) 7000 Omni-Rx Health 10½ net.

This will also serve to confirm 10,750 shares at 12 net, and that said proceeds will be deposited to your account on Oct. 12, 1973. We hereby guarantee payment of said proceeds.

Sincerely,

/s/ Ralph T. Iannelli
For Pressman, Frohlich & Frost

**Affidavit of Defendant, John Surgent, in
Opposition to Motion for Preliminary Injunction**

STATE OF NEW JERSEY)

SS:

COUNTY OF PASSAIC)

JOHN W. SURGENT, being duly sworn, deposes and says:

1. I am one of the defendants in the above entitled matter.

2. I submit this affidavit in opposition to the commission's motion for preliminary injunction against myself which seeks to enjoin me from further violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77q(a) and Section 10(b) of the Securities Exchange Act of 1934, ("Exchange Act"), 15 U.S.C. 78j(b) and Rule 17 C.F.R. 240.10b-5 thereunder.

3. I am familiar with the facts alleged in the plaintiff's complaint pertaining to myself. I make this affidavit on my own personal information and belief. The source of my information and the grounds for my belief are substantiated by documents in my possession and documents and records in the possession of other defendants.

4. I have had an opportunity to thoroughly review the affidavit of Mr. Meyer Goldman which was submitted on behalf of the commission in support of the application for preliminary restraints. Paragraph 4 of that affidavit refers to Mr. Iannelli's employment with Pressman, Frohlich & Frost, Inc. I have no personal knowledge as to the point in time that Mr. Iannelli was employed by Pressman, Frohlich & Frost, Inc. I do know that he was in their employ from the latter part of September to the early part of October 1973.

5. I am an attorney licensed to practice law in the states of New Jersey and West Virginia. I have been admitted to practice before the federal district court of New Jersey and also the United States Supreme Court. I maintain my offices and practice as a sole practitioner at 246 Clifton Avenue, Clifton, New Jersey 07011. At one time I maintained a practice with my brother, George F. Surgent, under the name of Surgent and Surgent.

6. I am not familiar as to when the registration of Omni-Rx Health Systems 200,000 shares at \$7.00 became effective but have no reason to question the veracity of the statement made in paragraph 7 and 8 of the affidavit of Mr. Goldman on behalf of the commission in support of their motion under the subtitle Background and Introduction.

7. I was aware, in regards to paragraph 9 of Mr. Goldman's affidavit, that on October 5, 1973 the commission had suspended trading the Omni-Rx stock for a period of 10 days. Mr. Goldman's affidavit seems to convey the conclusion that the stock's erratic price movement was the reason for the suspension. I do not have personal knowledge of it, but I would believe that the suspension of trading was a result of numerous complaints by the public and also by the large position of one of its market makers, Pressman, Frohlich & Frost, Inc. Mr. Howard Frost, the president of Pressman, Frohlich & Frost, Inc. was one of the major market makers and through defendant, Iannelli, rigged and manipulated the market of Omni-Rx Health Systems.

8. I specifically and unequivocally deny that I had in any way knowledge which facilitated, aided and abetted the illegal activities of Mr. Iannelli who, I believe was acting as a direct agent for Howard Frost and I specifically

deny unequivocally that I knowingly facilitation, aided and abetted the illegal activities of Mr. Howard Frost.

9. In regards to the role of Ralph Iannelli, which is set forth in paragraphs 11 through 19, I note with extreme interest that, although the complaint indicates that I was an aider and abetter of the illegal acts of Mr. Iannelli from the early part of September 1973 (See paragraph 9 of the complaint) that the market price of the stock was at \$2.00 and I hereby query if I was an aider and abetter, why didn't I buy the stock at \$2.00 instead of \$6.00 or \$7.00.

10. It is obvious by the information supplied in Mr. Goldman's affidavit, more specifically paragraphs 12 through 19 that the illegal activities in Omni-Rx were the sole result of the wrongful acts of Mr. Howard Frost as the market maker for Omni-Rx on behalf of Pressman, Frolich & Frost, Inc. and the illegal acts of Mr. Iannelli. Mr. Frost had direct knowledge of all acts of Ralph Iannelli. He accepted, as per paragraph 18 of the affidavit trading profits of \$80,000.00. It is highly improbable, especially in view of the fact that Mr. Frost had available to him on a daily basis all the trades made by his firm directly to the firm itself, or to its customers, information pertaining to who sold and who bought the security.

11. Mr. Frost's knowledge as to the illegality of the transactions and unauthorized purchase orders from customers was apparent the first day that an illegal trade was made or the first complaint from a customer that a trade was unauthorized.

12. Mr. Frost did nothing to correct Mr. Iannelli's behavior, but in my own presence sometime after they got

me involved, requested Mr. Iannelli to find other purchasers to maintain the market. Mr. Frost was an active participant with a criminal design to accomplish illegal profits.

13. In regards to paragraph 20, Mr. Iannelli never approached me and requested that I be part of an illicit scheme to manipulate the price of a stock. I would have told him in so many explicit words to "go to hell".

14. In regards to Paragraph 25, unequivocally Mr. Iannelli informed me on or about September 26, 1973 that he wished my New York Stock Exchange business. Mr. Iannelli had become known to me at a point in time before these transactions as an employee of a firm which we represented in New York, M. Bernstein Securities. It was at the time that I was retained by M. Bernstein Securities that I was introduced to Mr. Iannelli. My acquaintance with Mr. Iannelli was on a one-time introduction basis.

15. The allegations contained in paragraph 25 of Mr. Goldman's affidavit are incorrect in that Mr. Iannelli had never at any time prior to my ordering of the stock informed me that the stock had been improperly ordered by Mr. Iannelli for another customer's account. Mr. Iannelli had informed me at the time he promoted my business that he and Mr. Frost were maintaining a market in a stock known as Omni-Rx Health Systems that they maintain large business in the stock and that he could sell stock to me below the market price, namely the bid side of the market. This was at the first time he first taunted me to purchase the stock. I informed him at that time that I was not an over-the-counter market trader, that I was more familiar with the New York Stock Exchange and preferred to deal at that level. Mr. Iannelli told me to purchase some shares and that I would be very satisfied with the results. I then proceeded to give him business on the

New York Stock Exchange. Mr. Iannelli gave me a written confirmation on this original trade on September 26, 1974. I asked him for a written confirmation because of the fact that he was clearing through another house and I knew it would take sometime to get the confirmations on the over-the-counter trades. The trades made on the New York Stock Exchange came through but I never did receive the sell trades on the over-the-counter stock which was Omni-Rx.

16. For the sake of clarification all transactions that were taken on this stock are set forth in my Answer.

17. If the court has had an opportunity to view the movie "The Sting", I can unequivocally state that I was a victim of a fraudulent scheme which resulted in the following: 1) my loss of \$25,000.00; 2) Subject me to an action by the Securities and Exchange Commission and 3) if the court grants the preliminary injunction, I will be suspended and barred from practicing before the SEC pursuant to Rule 2E.

18. At the time I had depositions taken with Mr. Iannelli at his attorneys' office in Newark, New Jersey, Mr. Iannelli apologized to me for getting me involved in this transaction. He told me he thought I would be more sophisticated and that I should not have believed him. I asked him why and he in so many words told me that Mr. Frost had directed him in the latter part of September to find a sophisticated sucker to put all the stock in his name. Mr. Iannelli told me that Mr. Frost had a large position in the stock and was approaching a position of being classified as an insider. If this happened then all the stock held by Pressman Frohlich and Frost, Inc. would become non-tradeable. In addition he told me that Mr. Frost "was the market" and he was afraid that his firm

was going to go broke. I believe that because of the magnitude of the trades, the SEC presumed that I became an aider and abetter. I wish to assure the Court that I had no intention and did not knowingly get involved with an illegal scheme and that my reasoning for trading in the stock was for profit. I had on occasions, by my own broker, been called a bid hitter. The type of trader that would take large positions. So, the argument by the SEC that I should have been sophisticated and known what was going on was purely based upon speculation as to the truthfulness of what happened. I am an attorney and I have never had any problem with any other firm in regards to my stock account. I have taken substantial losses, which on one occasion, amounted to some \$30,000. I have never renigged on my word and I have maintained the highest degree of integrity in dealing on a professional basis and also on a business basis.

19. When I was introduced by Mr. Iannelli to Mr. Frost the credibility of Mr. Iannelli was increased substantially. Mr. Frost represented to me to be the president of a member firm who I took on face value which of course, now I can see was a mistake, but then who is not so clever in life not to be fooled at least once.

20. At the present time, Pressman, Frohlich & Frost have instituted suit against myself and others that I acted as agent for the difference between the sale of the security on a liquidated basis and the price I paid which is an amount in excess of \$100,000. If I am an aider and abetter, based upon the fact that I have in summary lost \$25,000.00 and am being sued by Pressman, Frohlich & Frost for an amount in excess of \$100,000 is by all rights these losses belong to Pressman, Frohlich & Frost which I believe would have prevented the merge of Pressman, Frohlich & Frost into Phillips, Appel and Walden. I will be more than willing to testify and lay it on the line.

/s/ John W. Surgent

NOTARIZED

Opinion of Judge Constance Baker Motley, D. J.
(Filed January 29, 1975)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This is an action brought by the Securities and Exchange Commission for an injunction enjoining the three defendants, Ralph T. Iannelli, Howard Frost, and John Surgent, from violating the anti-fraud provisions of the federal securities laws. Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(a), and Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Rule 17 C.F.R. 240, 10b-5.

The action was commenced on August 6, 1974. The next day defendants Iannelli and Frost consented to the entry of final judgments against them. On August 9, 1974 the SEC moved for a preliminary injunction against Surgent which was heard on October 23, 1974. During the hearing the SEC requested that the trial on the merits be advanced and consolidated with the preliminary injunction hearing. The court agreed. Rule 65(a)(2) Fed. R. Civ. P., and, accordingly, now sets forth its findings of fact and conclusions of law. The court concludes that it has jurisdiction over defendant Surgent and the subject matter of this proceeding. *Securities and Exchange Commission v. Spectrum Ltd.*, 489 F.2d 535 (2d Cir. 1973); *Securities and Exchange Commission v. Manor Nursing Centers, Inc.*, 458 F.2d 1082 (2d Cir. 1972); *Securities and Exchange Commission v. Texas Gulf Sulphur Co.*, 401 F.2d 833, *cert. denied sub nom.*; *Kline v. Securities and Exchange Commission*, 394 U.S. 976 (1969); 15 U.S.C. §§ 77v(a) and 78aa.

The court also concludes that the Securities and Exchange Commission has made the requisite showing and

that the requested permanent injunctive relief should be granted. 15 U.S.C. § 77e(b), 78u(e).

Most of the facts are not really in dispute. (Plaintiff's Exh. 3) The pivotal fact is that Iannelli admittedly caused approximately 50% of the publicly traded shares of Omni-Rx stock to be purchased for the accounts of twenty three customers without the prior knowledge or authorization of these customers in order to manipulate the price of the shares in the over-the-counter market. Upon learning of these unauthorized purchases, the customers involved refused to pay for the shares, even though the price of the shares had risen. In desperation Iannelli sought to have someone else come to his rescue and adopt these purchases. Surgent subsequently adopted these purchases by purchasing a large number of these shares below the then prevailing market price. He simultaneously, and pursuant to prearrangements with Iannelli, resold the same shares for a profit. He had planned to sell other shares when the scheme was uncovered.

Surgent's claim is that he was merely taking advantage of an opportunity to make a profit, that he was an innocent victim of Iannelli's scheme to defraud, and that he did not know that the shares he agreed to purchase were purchases which had never been authorized by the purported owners. For the reasons set forth below, the court finds that Surgent was a sophisticated, knowledgeable trader in securities and knew or should have known that he was aiding and abetting illegal activity on the part of Iannelli. The court further finds that there is a reasonable likelihood that Surgent will commit future violations of the federal securities law and consequently permanent injunctive relief is justified under the circumstances of this case. 15 U.S.C. §§77e(b), 78t(e).

Omni-Rx Health Systems, Incorporated, (Omni-Rx), pursuant to a registration statement which became effective on December 21, 1972, offered for sale to the public 200,000 shares of its common stock at \$7.50 per share. The offering was underwritten by a syndicate managed by Frank & Drake, Inc., on a firm commitment basis. Frank & Drake, Inc. is now defunct broker-dealer in securities. Iannelli was employed as a registered representative with Pressman, Frohlich and Frost, Inc. (Pressman), a New York broker-dealer from March 5, 1973 to October 4, 1973, the date when his scheme to defraud was uncovered. Pressman was registered with the SEC, a member of the New York Stock Exchange, Inc., and other national securities exchanges. It was also a member of the National Association of Securities Dealers, Inc. Defendant Frost was president of Pressman and supervised its market making activities. Surgent is an attorney admitted to practice in New Jersey and West Virginia.

During the Omni-Rx offering, Iannelli was employed as a registered representative at Frank & Drake. He purchased 10,000 shares of Omni-Rx stock on behalf of certain of his customers. Following the public offering, Omni-Rx had traded in the over-the-counter market through the inter-dealer quotation media known as the "pink sheets" and the National Association of Securities Dealers Automated Quotation System "NASDAQ." In May 1973, when Iannelli was then employed by Pressman, that firm became a market maker in the over-the-counter market trading of Omni-Rx. During the relevant periods of time here, Pressman continued to act as a market maker and utilized NASDAQ to enter bids and ask quotations for Omni-Rx stock. Iannelli purchased approximately 15,000 Omni-Rx shares on behalf of certain of his customers from May 1, 1973 through September 6, 1973. In each of these trans-

actions the customer either gave Iannelli prior authorization to make the purchase or subsequently ratified Iannelli's actions by making the required payment. During this period the market price of Omni-Rx rose from approximately \$2 per share to \$6 per share.

Thereafter, from September 9, 1973 through October 3, 1973 Iannelli caused 100,500 shares of Omni-Rx approximately 50% of the entire public offering, to be purchased for the accounts of twenty-three customers. Each of these purchases was made without prior knowledge or authorization on the part of the customer. As a result of these purchases, the price of the stock rose from approximately \$6 per share to more than \$12 per share. If Iannelli had received his commissions on these unauthorized purchases he would have realized the sum of \$60,000. However, because his scheme was uncovered in early October 1973, Iannelli's actual commissions were only \$10,000.

After these purchases were made, confirmations were mailed to the customers by Loeb, Rhoades & Co., Inc. (Loeb), a New York broker-dealer. Despite the rise in the price of the stock, in virtually every instance the customer refused to ratify the purchase. Iannelli thereupon secured extensions of time for payment by informing the margin department of Loeb that no payment had been received, that he would have to speak to the customer, and that more time to secure payment should be granted. Extensions were granted until September 26, 1973. Iannelli sought other purchasers to pay for these stocks before the extensions of time expired. He was unsuccessful.

Iannelli then sought the assistance of Jack Wagenti. Iannelli and Wagenti had worked together in the securities business approximately two years before. Wagenti referred Iannelli to Surgent. Surgent and Iannelli had been introduced to each other by Wagenti about two years

before, but other than that brief introduction, they did not know each other. On September 25, 1973 Iannelli called Surgent on the telephone and offered to sell him Omni-Rx stock at prices which were then substantially below the market price. Iannelli advised Surgent that Pressman was a prime market maker in Omni-Rx stock. The next day, Surgent visited the Pressman offices where he learned that the stock offered to him by Iannelli had been purchased for customers who had not made payment. He agreed to adopt these purchases if the stock purchased could be sold simultaneously and immediate confirmation could be issued. Surgent made his purchase conditioned upon receiving immediate written confirmation of both the purchase and sale. Iannelli agreed to the condition. As a result, Surgent thereupon made the following purchase orders for the account of London Corporation, a New Jersey company of which Surgent was president.

- (a) 1,900 shares at \$6.875 per share
- (b) 600 shares at \$7.50 per share
- (c) 1,000 shares at \$7.50 per share.

These were the prices at which Iannelli purchased the shares for his customers. Surgent simultaneously ordered the sale of all 3,500 shares at \$10.50 per share, the prevailing market price of that date, September 26, 1973. Pursuant to agreement, written confirmations were prepared by Iannelli under Surgent's direction. Ordinarily, computerized confirmation would have been mailed in the ordinary course of business. Consequently, such immediate written confirmations were unusual. Surgent required the written confirmations to state that due to a computer error London Corporation had not previously received confirmations for the purchases. He also requested Iannelli to use the dates on which the trans-

actions being adopted by London were initially executed as the dates which London originally purchased the 3,500 shares. London was also guaranteed, in the letter of confirmation prepared by Iannelli, payment of the proceeds of the sale of 3,500 shares. Surgent gave Iannelli a check for \$25,000 for the purchases made that day, September 26, 1973.

Similar purchases and sales of Omni-Rx stock were thereafter made by Iannelli and Surgent. On September 28, 1973 Surgent entered additional orders for the purchase and sale of 4,000 shares which were effected in the same manner and pursuant to the same terms and conditions as the September 26, 1973 transaction. The selling price on that date was \$10.50 per share. Surgent gave Iannelli London's check for \$32,250 for this purchase and received the same guarantee of payment for the sale.

On October 1, 1973 a similar transaction took place. However, this time the transaction was effected by Surgent on behalf of his law firm, Surgent & Surgent. The order was for 3,000 shares at \$8.50 per share. The selling price on that date was \$11.00 per share. Surgent gave a check on behalf of his firm for \$25,000 and received the same guarantee of payment.

On October 2, 1973, still another similar transaction took place for the account of Surgent & Surgent. This time the purchase order was for 3,750 at \$9.875 per share and 7,000 shares at \$10.50 per share. These 10,750 shares were to be sold for \$12 per share.

On October 3, 1973 Surgent tendered two checks on behalf of the Surgent firm for the two purchases of October 2, 1973. One check dated October 3, 1973 was for \$37,031.25. The second check dated October 4, 1973 was for \$73,500.

On October 2, 1973 Surgent made a similar purchase and sale transaction for the account of Premium Finance Corporation of which Surgent is president. The purchase order was for 7,000 shares at \$9.25 per share. The sale price for these shares was \$11.25 per share.

On October 3, 1973, Surgent went to the Pressman offices and tendered to them a Premium check for \$64,750 and the other two checks referred to above. It was at this point that the fraudulent scheme was uncovered.

While Surgent waited at the Pressman offices, Frost, the person to whom the checks had been presented, delivered them to Loeb and sought to obtain a check from Loeb for the sale by London of the 3,500 Omni-Rx shares on September 26, 1973. However, the relationship between the London Company, Surgent and Surgent, and the Premium corporation then became apparent to someone at Loeb. As a result, Loeb refused to remit the proceeds of London's sale of 3,500 shares on September 26, 1973 to Surgent until such time as the check given in payment for subsequent purchases in the three accounts cleared. Loeb accordingly sought certification of the October 3 checks.

Surgent, upon being informed of Loeb's action, informed Frost that without the proceeds of the first sale there would be insufficient funds in Surgent's other accounts to cover subsequently issued checks. Surgent then demanded a \$34,000 check from Iannelli to keep the scheme afloat. Iannelli produced a worthless check from RIT Enterprises, Inc., a corporation owned and controlled by Iannelli. Surgent's plan was to deposit this check in one of his accounts knowing that his bank would pay any checks presented against the funds represented by this check even though uncollected. On October 4, 1973 two

events resulted in the final unfolding of the scheme to defraud. Loeb was unable to certify checks of Surgent and Surgent and the Premium Corporation due to lack of funds. Pressman and Loeb began receiving letters from Iannelli's customers disclaiming any knowledge of the Omni-Rx purchases. This led to a review of all of Iannelli's purchases. Had the scheme succeeded, Surgent would have realized \$60,000 in profits.

Surgent knew Wagenti, the man from whom Iannelli sought assistance. Wagenti and Iannelli had worked together two years before at the firm of M. Bernstein Securities, as a broker dealer. Wagenti had introduced Surgent to Iannelli in or about September 1971, but other than that Surgent and Iannelli were not well acquainted with each other. Wagenti was a client of the Surgent firm in September 1973 and rented offices from that firm. Surgent had also represented Wagenti prior to September 1973 with respect to the formation of a corporation. Surgent had also discussed Omni-Rx with Wagenti prior to September 1973. Wagenti accompanied Surgent to the Pressman offices on several occasions during Surgent's negotiations with Iannelli. Surgent had also represented M. Bernstein, a broker dealer registered with the Commission, had had some experience with blue sky regulations, and had represented a broker dealer in connection with a public offering of securities. He had also been an active, sophisticated trader in securities. His own broker dubbed him a "big hitter."

As early as September 20, 1973 Surgent had aided and abetted Iannelli's scheme by misrepresenting to Iannelli's superior at Pressman that certain purchases effected for the account of Wagenti of September 13, 17 and 20 were in error and should have been charged to Surgent's account. This misrepresentation was crucial since it pre-

vented discovery at that time of the fact that these particular purchases had been unauthorized by Wagenti.

This misrepresentation was followed by the misrepresentations cited above, including the adoption by Surgent of other unauthorized purchases made by Iannelli, the dictation of the letters of confirmation by Surgent which were prepared by Iannelli and which, among other things, represented that previous confirmations had not been received by Surgent's firms due to computer errors.

If Surgent had not thus aided Iannelli, the unauthorized purchases would have been sold into the open market, resulting in a depression of the market of Omni-Rx. This result would have made it unlikely that Iannelli would have been able to find other persons to adopt the unauthorized sales. The opportunity for instant profit would have been lost.

The court, therefore, finds and concludes that Surgent knew, or should have known, what Iannelli had done and that he, by his actions, was assisting Iannelli in concealing the unauthorized purchases and effectuating Iannelli's scheme. *Securities and Exchange Commission v. Spectrum, Ltd.*, 489 F.2d 535, 541 (2d Cir. 1973).

Surgent insists that he was an innocent victim of the Iannelli design. He does not deny the essential transactional facts set forth above. What he denies is that he knew or should have known that a fraud was underway in his dealings with Iannelli. He says he was motivated simply by a desire to make a profit. His alleged naiveté is belied by his securities background and the highly artful nature of the transactions, themselves, in which he was engaged with Iannelli. The facts show a deliberate effort on Surgent's part to assist in the realization of an illegal profit. In view of Surgent's unchanged posture in the

face of the undisputed facts, and the serious nature of the violations, the court is convinced that there is a reasonable likelihood that Surgent may engage in similar violations of the securities laws and that injunctive relief is essential in order to protect the public from similar manipulations by Surgent in the future. Cf. *Securities and Exchange Commission v. Manor Nursing*, 458 F.2d 1082 (2d Cir. 1972).

The court also concludes that Surgent aided and abetted violations of Section 17a of the Securities Act of 1933, 15 U.S.C. 77q(a), and Section 10(b) of the Securities Exchange Commission Act of 1934, 15 U.S.C. 78j(b) and Rule 17 C.F.R. 240.10b-5 thereunder in connection with the manipulations of the market prices of Omni-Rx stock by use of means and instruments of transportation or communication in interstate commerce and of the mails. Cf. *Securities and Exchange Commission v. Manor Nursing Centers, Inc.*, *supra*.

An injunction will therefore issue. Submit order on five days' notice.

Dated: New York, New York
January 29, 1975

/s/ Constance Baker Motley
CONSTANCE BAKER
MOTLEY, U.S.D.J.

Plaintiff's Exhibit 3
Combined Stipulation of Facts

FACTS

In accordance with this Court's directive regarding pre-trial memoranda, the following represents a summary of the factual evidence to be introduced by the Commission at the hearing scheduled for October 23, 1974. These facts are either contained in public official files of which this Court may take judicial notice or will be presented through documentary or testimonial evidence.¹

1. On December 21, 1972 the Commission declared effective a registration statement for sale to the public of 200,000 shares of the common stock of Omni-Rx at a price of \$7.50 per share. The offering was conducted on a firm commitment basis in that the underwriter purchased the entire issue. It was underwritten through a syndicate managed by Frank & Drake, Inc. ("Frank & Drake") a now defunct New York broker-dealer in securities. No prior or subsequent public offering was ever conducted on behalf of Omni-Rx.

2. Defendant Ralph T. Iannelli ("Iannelli") was employed as a registered representative at Pressman, Frohlich & Frost, Inc. ("Pressman"), a New York broker-dealer, from March 5, 1973 to October 4, 1973.

3. Pressman, at all times relevant herein, was registered with the Commission as a broker-dealer in securities, a member of the New York Stock Exchange, Inc. and other national securities exchanges and a member of the National Association of Securities Dealers, Inc.

1. It should be noted that, while the plaintiff Commission will endeavor to present the facts as stated herein, it is not precluded from altering the chronology of its presentation nor from calling witnesses or presenting exhibits not listed herein.

4. Defendant Howard Frost ("Frost") at all times relevant herein, was president of Pressman, and was the trader for said firm maintaining a market in a stock known as Omni-Rx.

5. Defendant Surgent is an attorney-at-law admitted to practice in the States of New Jersey and West Virginia.

6. During the Omni-Rx public offering Iannelli was employed as a registered representative at Frank & Drake and purchased approximately 10,000 shares of Omni-Rx stock on behalf of certain of his customers.

7. Following the public offering, Omni-Rx stock has traded in the over-the-counter market through the inter-dealer quotation media of the "pink sheets"² and "NASDAQ."³

8. In May of 1973, Pressman became a market maker in the over-the-counter trading of Omni-Rx common stock. During the relevant period referred to herein, Pressman continued to act as a market maker and utilized "NASDAQ" to enter bid and ask price quotations for Omni-Rx stock.

9. From May 1, 1973 through September 6, 1973, Iannelli purchased approximately 15,000 shares of Omni-Rx stock on behalf of certain of his customers. In each of these transactions, the customer authorized Iannelli to purchase the shares. During this four month period, the market price of Omni-Rx stock gradually rose from approx-

2. The "pink sheets" are a service of the National Quotation Bureau, Inc., a private organization which publishes and circulates such sheets each day among its subscribers. The pink sheets contain quotations which reflect the prices at which brokers and dealers are willing to purchase and sell over-the-counter securities.

3. "NASDAQ" stands for the National Association of Securities Dealers Automated Quotation System. It is an automated system whereby brokers and dealers project prices at which they are willing to purchase and sell over-the-counter securities.

imately \$2 per share to approximately \$6 per share. Thereafter, from September 7, 1973 through October 3, 1973, Iannelli caused 100,500 shares of Omni-Rx stock, approximately 50% of the entire publicly trading Omni-Rx stock, to be purchased for the accounts of 24 customers. Each of these transactions was effected without the prior knowledge or authorization of the customer for whose account the shares were purchased. During this period of approximately one month, the market price of Omni-Rx common stock rose sharply from approximately \$6 per share to more than \$12 per share.

10. Had Iannelli been paid his commissions on the unauthorized trades, he would have earned approximately \$60,000. However, by virtue of Iannelli's scheme having been unveiled in early October 1973, he only realized approximately \$10,000 of these commissions.

11. Iannelli's scheme, which was premised on creating and prolonging a rising market price for Omni-Rx stock, was commenced by entering orders for the purchase of Omni-Rx stock on behalf of customers who had not previously authorized such transactions. Iannelli expected that, because of the effect these trades would have in generating demand and which would, and did, increase the price, such customers would ratify the unauthorized trades.

12. Thereafter, confirmations were mailed by Loeb Rhoades & Co., Inc. ("Loeb"), a New York broker-dealer in securities through which Pressman cleared its business, notifying the customers of these purchases. During the interim between the date on which Iannelli had effected the purchase orders, without authorization, and the date on which customers received their confirmations, the price of Omni-Rx stock rose, as a result of the series of unauthorized transactions effected by Iannelli.

13. Upon receipt of confirmations for the unauthorized purchases, the customers called Iannelli for an explanation as to why they had received such confirmations. At that time, Iannelli informed the customers of the price rise in the hope that the purchase orders which he had entered would be ratified by the customers.

14. In ~~all~~ every instance, the customers refused to ratify the transactions and rejected the unauthorized purchases. In order to gain time within which he might find new customers to adopt the previously unauthorized purchases, Iannelli procured extensions of time for the payment of these transactions by informing the margin department of Loeb that no payment had been received, that he would have to speak with the customer and that more time was required to obtain payment.

15. By September 26, 1973 the extensions of time for payment were expiring. However, Iannelli had not been able to enlist persons to adopt the previously unauthorized trades.

16. Sometime prior to September 26, 1973, Iannelli sought the aid of Jack Wagenti ("Wagenti"), an individual Iannelli had met while employed by another broker-dealer. Wagenti, in response to Iannelli's request for the referral of clients, recommended Surgent, whom Iannelli had met once approximately two years before.

17. At all times relevant herein Surgent and Wagenti had offices in the same office building.

17a. Surgent is a sophisticated investor with respect to the trading of securities. He has been an extremely active trader in the securities markets (indeed active enough to be termed a "big hitter"), has represented a broker-dealer which was registered with the Commission, and formerly maintained a ticker tape machine in his office.

18. Surgent, who was familiar with the business of Omni-Rx, expressed an interest in purchasing the stock. During the period from approximately September 10 to September 26, 1973 Iannelli spoke with Surgent approximately five times. In these conversations, Iannelli advised Surgent of the price movements of Omni-Rx stock.

19. On September 13, 17 and 20, 1973 Iannelli placed orders without authorization, for the purchase of a total of 13,750 shares of Omni-Rx at prices ranging from \$8½ per share to \$10½ per share in the account of Wagenti. Confirmations for these purchases were mailed to Wagenti at his office by Loeb within two days of the purchases. As is discussed below in paragraphs 38 and 43 Surgent ultimately adopted these unauthorized purchases.

21. On September 25, 1973, during a telephonic conversation between Iannelli and Surgent, Iannelli offered Surgent Omni-Rx stock at prices below the then prevailing market price. Iannelli also informed Surgent, in response to Surgent's inquiries, that there were seven or eight market makers in Omni-Rx stock and that Pressman was a prime market maker.

22. On September 26, 1973 Surgent and Wagenti visited the offices of Pressman. At that time, Surgent, aware that the securities he was being offered by Iannelli had originally been purchased for other accounts but for which no payment had been made, agreed to adopt the purchases if the securities were sold simultaneously and if he (Surgent) would receive immediate written confirmation.

23. Thereupon Surgent entered, on September 26, 1973, the following orders for Omni-Rx stock for the account of London Corporation ("London"), a New Jersey corporation of which he is president: (a) the purchase of 1,900 shares at \$6.875 per share, 300 shares at \$7.50 per share

and 1,000 shares at \$7.50 per share (the prevailing market prices on September 7 and 10, 1973); and (b) the sale of all 3,500 shares at \$10.50 per share (the prevailing market price on the date of the transaction, September 26, 1973).

24. The three purchases of September 26, 1973 effected by Surgent were in effect an adoption by Surgent of three purchases effected by Iannelli without authorization in two other accounts on September 7 and 10, 1973. No payment had ever been made by the two customers whose accounts these unauthorized transactions of September 7 and 10, 1973 had been effected.

25. Surgent then received in the offices of Pressman a letter dated September 26, 1973 to Iannelli which Iannelli prepared on Pressman stationery. This letter was to provide immediate confirmation of the trades.

26. The letter: (a) confirmed the three purchases described above in paragraph 23; (b) confirmed the sale described above in paragraph 23; (c) guaranteed to Surgent the payment of the proceeds of the sale; and (d) indicated that Surgent had not received confirmations for the transactions due to a computer error.

27. On September 26, 1973 Surgent tendered on behalf of London a check for \$25,000 in payment for the purchases of that day.

28. Subsequently the purchases and sales were executed in accordance with the letter prepared by Surgent and Iannelli resulting in a profit to Surgent of approximately \$11,000.

31. On September 28, 1973 Surgent entered further orders in the account of London for the purchases of 2,000 shares of Omni-Rx stock at \$8 per share and 2,000 shares at \$8.125 per share (the prevailing market prices on Sep-

tember 11 and 12, 1973) and the sale of the 4,000 shares at \$10.50 per share (the prevailing market price on the date of the transaction, September 28, 1973).

32. The two purchases of September 28, 1973 effected by Surgent were in effect an adoption by Surgent of two purchases effected without authorization by Iannelli in two other accounts on September 11 and 12, 1973. No payment had ever been made by the two customers for whose accounts these unauthorized transactions of September 11 and 12, 1973 had been effected.

33. Surgent again received, in the offices of Pressman, a letter to Iannelli which was prepared on Pressman stationery. This letter was again to provide immediate confirmation of the trades.

34. This letter, prepared on the date of the purchases, September 28, 1973, (a) confirmed the two purchases described in paragraph 31 above; (b) confirmed the sale described in paragraph 31 above; (c) guaranteed to Surgent the payment of the proceeds of the sale; and (d) indicated that Surgent had not received confirmations for the transactions due to a computer error.

35. On September 28, 1973 Surgent tendered a check on behalf of London for \$32,250 in payment for the purchases of that date.

37. On October 1, 1973 Surgent entered yet more orders, this time in the account of Surgent & Surgent ("Surgent firm"), a law partnership of which Surgent was a member, for the purchase of 3,000 Omni-Rx shares at \$8.50 per share (the prevailing market price on September 13, 1973) and the sale of such shares at \$11 per share (the prevailing market price on the date of the transaction, October 1, 1973).

38. These 3,000 shares had previously been purchased, without authorization, by Iannelli for Wagenti's account on September 13, 1973. Wagenti was aware, shortly after September 13, 1973, of this unauthorized transaction and had never made payment for the purchase.

39. Once again Surgent received, in the offices of Pressman, a letter to Iannelli, dated October 1, 1973 which Iannelli prepared on Pressman stationery. Once again, the letter was to provide immediate confirmation of the trades.

40. The October 1, 1973 letter: (a) confirmed the purchase described above in paragraph 37; (b) confirmed the sale of the 3,000 shares at \$11 per share; (c) guaranteed to Surgent the payment of the proceeds of the sale; and (d) indicated that Surgent had not received confirmations for the transactions due to yet another computer error.

41. On October 1, 1973 Surgent tendered a check drawn on the account of the Surgent firm for \$25,500 in payment for the purchase of that day.

42. On October 2, 1973 Surgent entered more orders on behalf of the Surgent firm for the purchase of 3,750 Omni-Rx shares at \$9.875 per share and 7,000 shares at \$10.50 per share (the prevailing market prices on September 17 and 20, 1973) and the sale of these 10,750 shares at \$12 per share (the prevailing market price on the date of the transaction, October 2, 1973).

43. These two purchases of October 2, 1973 effected by Surgent were in effect an adoption by Surgent of two purchases effected by Iannelli, without authorization, for the account of Wagenti on September 17 and 20, 1973. Wagenti had never paid for these two purchases.

44. Again Surgent received a letter in Pressman's offices to Iannelli which Iannelli prepared on Pressman stationery.

This letter was also to provide immediate confirmation of the trades.

45. The letter, dated October 2, 1973: (a) confirmed the two purchases described above in paragraph 42; (b) confirmed the sale described above in paragraph 42; (c) guaranteed to Surgent the payment of the proceeds of the sale; and (d) indicated that Surgent had not received confirmations for the transactions due to yet another computer error.

46. On October 3, 1973 Surgent tendered two checks on behalf of the Surgent firm in payment for the two October 2, 1973 purchases, described above in paragraph 42. One check dated October 3, 1973 was for \$37,031.25 and the other check dated October 4, 1973 was for \$73,500.

47. Also on October 2, 1973 Surgent entered orders on behalf of the Premium Finance Corp. ("Premium"), of which Surgent is the president, for the purchase of 7,000 Omni-Rx shares at \$9.25 (the prevailing market price on September 14, 1973) per share and the sale of such shares at \$11.25 per share (the prevailing market price on the date of the transaction, October 2, 1973).

48. The purchase effected on October 2, 1973 by Surgent was in effect an adoption of three purchases effected by Iannelli without authorization in three other accounts on September 14, 1973. No payment had ever been made by the three customers for whose accounts these unauthorized transactions of September 14, 1973 had been effected.

49. Surgent also received in the offices of Pressman, a letter on October 2, 1973 which (a) confirmed the purchase and sale described above in paragraph 47; (b) guaranteed to Surgent the payment of the proceeds of the sale; and (c) indicated that Surgent had not received confirmations for the transactions due to yet another computer error.

50. On October 3, 1973 Surgent tendered a check to Loeb on behalf of Premium for \$64,750.

52. During the period from September 26, 1973 to October 4, 1973 Surgent was present in the offices of Pressman virtually every day.

53. On October 3, 1973 Loeb took note of an apparent interrelationship between the London, Surgent firm and Premium accounts. Accordingly, Loeb was reluctant to remit the proceeds of London's sale of 3,500 Omni-Rx shares on September 26, 1973 to Surgent until such time as the checks given in payment for subsequent purchases in the three accounts cleared.

54. Accordingly, Loeb withheld the proceeds of such September 26, 1973 sale, although due on October 3, 1973, until the next day in order that the subsequent checks might be certified.

55. Surgent informed Frost that he needed the drafts for the sales of stock in order to cover the checks Surgent gave Frost. Surgent had informed Frost that there were insufficient funds to cover the checks.

58. On October 4, 1973 Loeb was unable to certify Surgent's checks. Also on that day, Pressman and Loeb began receiving letters from various customers of Iannelli disclaiming any knowledge of the Omni-Rx purchases. These revelations caused a review of all of Iannelli's Omni-Rx trading and the eventual discovery of the scheme.

The Following are Excerpt from
Transcript dated October 23, 1974
Before: Hon. Constance Baker Motley, D. J.

* * *

(Commencing at Page 3, line 2)

THE COURT: Give me some idea of those facts which are disputed before we proceed to hear the testimony with respect to them.

MR. MANDEL: Fine, your Honor. Having looked at the documents, it would appear to the Commission that the only area of dispute would be the extent of Mr. Sargent's knowledge of the activities of Mr. Iannelli and the extent to which he gave any assistance to Iannelli and with respect to those particular items, the Commission is ready to present rather brief testimony if your Honor would deem this pretrial memorandum as a stipulation of facts contained therein.

THE COURT: All right, let us proceed then.

MR. MANDEL: Your Honor, I do have a witness I would call. Before we proceed may I just, so I have it clear to myself, would you deem the pretrial memorandum as handed up to you a stipulation of facts contained therein?

THE COURT: As I understand it, this is a motion for a preliminary injunction, is it not?

MR. MANDEL: Yes, it is.

THE COURT: Before I can either grant or deny that injunction, I will have to make findings of fact and conclusions of law, and as I have indicated in going over your pretrial memorandum here, in listening to the testimony, I will find there are some facts not disputed and others

that are disputed, (4) so that my findings would have to include both.

If you feel those facts are not disputed, you can point that out in a point that out in a proposed finding of fact and conclusion of law.

MR. MANDEL: What we propose is to have this pre-trial memorandum marked as an exhibit as a stipulation from which findings may in fact be drawn.

THE COURT: Is that agreed to?

MR. SURGENT: It is not agreeable to the defendant. I would like at this time, before I go on, to introduce my attorney, Mr. William Sellinger from Clifton, New Jersey who is a member of the New Jersey Bar and admitted to practice in the Federal Court in New Jersey.

I request the Court's permission at this time to allow Mr. Sellinger to assist me in this matter before the Court.

THE COURT: All right. What is your first name?

MR. SELLINGER: William. Mr. Sargent is going to conduct the trial and I intend to assist him and if he is called to testify I will conduct the direct examination.

THE COURT: Mr. Sargent, the first question is whether or not you agree with the suggestion of the SEC counsel that his making of the pretrial memorandum which has just been handed up should constitute a stipulation as to (5) those facts which are not in dispute?

MR. SURGENT: At this time I think that that application is premature based on the Commission's statement on page 3 of their memorandum where they say to the Court that it should be noted while plaintiff Commission will proceed on the facts stated here it does not preclude us from offering or altering the chronology or witnesses.

It may be at the end of the Commission's case there may be certain stipulations and the defense may be free to stipulate as contained in the memorandum. However, I think it is premature that this exhibit should be presented and I think at the end of the Commission's case, whatever the Court concludes, is stipulated.

THE COURT: Let me ask you, have you read the SEC pretrial memorandum?

MR. SURGENT: I have, your Honor. I have not read it with the changes and amendments that are initialled in. I just had it presented to me and I to the Court.

THE COURT: Do you find a number of facts in there to be correct?

MR. SURGENT: Your Honor, the transactions that were ratified by myself are correct. I do not contest the transactions.

What I do contest is the nature in which the transactions and how the transactions transpired rather than (6) transactions themselves.

THE COURT: I think that the SEC counsel agrees with that but you don't deny having signed certain papers, is that is?

MR. SURGENT: That is correct. Whatever I signed or whatever I received in the way of confirmations from Loeb Rhoades and Company forwarded by Mr. Iannelli I admit that it was a document that I did in fact receive as a matter of fact. We have started a suit in the Superior Court of New Jersey and attached exhibits as part of that complaint.

THE COURT: I didn't hear, you brought this suit in New Jersey? Who did?

MR. SURGENT: I did, your Honor.

THE COURT: Against whom?

MR. SURGENT: Pressman, Frohlich and Frost, Mr. Iannelli and Mr. Howard Frost, the president.

THE COURT: So at least all of the documents referred to in the SEC's pretrial memorandum. That is the list of the trading blotter that Mr. Frost used in making a market in the stock, and, in addition, I have subpoenaed Loeb Rhoades to (7) present all the confirmations and all the trades and checks and all the telegrams sent out pursuant to regulation T, and I think these documents should be admitted in this Court to set out whatever transpired by Mr. Iannelli and Mr. Frost and Pressman, Frohlich and Frost, and I think it is paramount to this Court to have those in order to make a determination as to whether I was directly involved in any manipulation that took place between Mr. Iannelli and Mr. Frost.

MR. MANDEL: May I just clarify our position for Mr. Sargent? It is not our contention that no further evidence may be introduced in this proceeding. It is merely our contention that inasmuch as the pretrial memorandum filed by the Commission and that filed by Mr. Sargent read identically, word for word as I have handed up to the Court, that these basic facts should be introduced as stipulations and we can go on from there, your Honor.

As to any other facts—

THE COURT: Do you understand that, Mr. Sargent?

MR. SURGENT: I understand that, your Honor. I have not, as I stated before, had an opportunity to review what they wrote. As the Court can well note, you can change a certain sentence and it may vary a point or the intention of a whole paragraph and perhaps during a re-

cess Mr. Mandel and myself can come to some sort of an agreement after I have (8) had an opportunity to review it.

THE COURT: All right, let us proceed then.

Mr. Mandel, do you want to call your first witness?

MR. MANDEL: Your Honor, the Commission calls Mr. Meyer Goldman to the stand.

MEYER GOLDMAN, called as a witness on behalf of the plaintiff being first duly sworn, was examined and testified as follows:

MR. MANDEL: Your Honor we have in fact called Mr. Goldman right now but again, in an effort to save this Court's time, I note in both the Commission's memorandum of law and the pretrial memorandum of Mr. Surgent, the very first exhibit listed is a schedule of certain unauthorized purchases and the adoption of those purchases by Mr. Surgent and also a second chart representing certain price ranges in the stock.

We have called Mr. Goldman to introduce those documents but if Mr. Surgent will stipulate to those documents we will obviate the necessity of Mr. Goldman's testimony.

MR. SURGENT: If Mr. Mandel doesn't mind, I am not telling him how to try his case but why not take each document and present to Mr. Goldman and I can take a look at it and say so stipulated and put it in evidence.

(9) THE COURT: All right.

DIRECT EXAMINATION
BY MR. MANDEL:

Q Please state your full name, sir?

A Meyer Goldman.

Q Where are you currently employed, Mr. Goldman?

A With the New York office of the Securities and Exchange Commission.

Q How long have you been with the Securities and Exchange Commission?

A About 15 years.

Q In what capacity are you currently employed?

A As supervisor investigator in the branch of enforcement.

Q And how long have you been a supervisor investigator?

A About a year and a half now.

Q As a supervisor investigator, Mr. Goldman, what are your duties?

A First of all to supervise investigators in my branch.

And, second, to participate in investigations, to determine whether any of the security laws have been violated.

(10) Q Do you have occasion because of your duties, Mr. Goldman, to review brokerage records?

A Yes.

A Yes.

Q Do you have occasion to speak with witnesses?

A Yes.

Q Do you gather and analyze documents?

A Yes.

Q Do you have any occasion to prepare schedules in connection with your duties, Mr. Goldman?

A Yes, very often.

Q Did there come a time that you were assigned to the investigation of a case known as Omni-Rx Health Systems, Inc.?

A Yes.

Q Approximately when was that, Mr. Goldman?

A That was in the early part of October, 1974.

Q In connection with this investigation can you tell us what your duties were?

A To look at all the records, to participate in the interview of witnesses, and to prepare any schedules that might be needed.

MR. MANDEL: Would you please mark this document Plaintiff's Exhibit 1.

(Plaintiff's Exhibit 1 marked for identification.)

Q Mr. Goldman, I ask you if you have ever seen what (11) has just been marked as Plaintiff's Exhibit 1 for identification?

A Yes, I prepared this schedule.

Q Could you tell us, Mr. Goldman, what this schedule is?

A This is a schedule which lists the unauthorized purchases by Mr. Iannelli for his clients and the assumption of some of these trades by Mr. Surgent.

Q Did you prepare this schedule from other sources?

A Yes.

Q Will you tell us what they are?

A Basically the order tickets, account statements, the testimony of Mr. Iannelli.

Q Also from confirmation?

A Yes.

Q Were there any letters which were used as a basis for this schedule?

A Yes, this involved letters by many of the clients listed on the schedule.

Q Mr. Goldman, can you specifically describe what this schedule shows?

A It basically shows the date of the transaction, the trade date, the client for whom the unauthorized purchase was made, the client's account number, the shares purchased (12) and the price.

And it also lists by designated letters, the assumption of some of the unauthorized trades by Mr. Surgent.

Q In other words, the trade taken over by Mr. Surgent are keyed in to earlier trades?

A Yes, that is correct.

MR. MANDEL: I offer Plaintiff's Exhibit 1 in evidence.

THE COURT: Any objection?

MR. SURGENT: Yes, your Honor. I would like an opportunity to ask the witness one or two questions pertaining to this document.

THE COURT: On voir dire?

MR. SURGENT: Yes.

THE COURT: All right.

VOIR DIRE EXAMINATION
BY MR. SURGENT:

Q Mr. Goldman, you have indicated in your testimony to Mr. Mandel that Mr. Surgent acquired some of these trades, is that correct?

A That is correct.

Q In other words there were other unauthorized trades?

A Yes.

(13) Q They are not shown and they are not listed on here?

A No, they are listed.

Q All the unauthorized trades that you received complaints of Pressman, Frohlich and Frost are listed on the sheet?

A Yes.

Q Were some of the trades taken in my account?

A Yes.

Q The Surgent Account?

A Yes.

Q You testified you reviewed certain confirmation slips?

A Yes.

Q Did you review the trading blotter?

A Not the trading blotter itself.

Q Can you tell the Court why you did not review the trading blotter?

A I didn't think it was necessary.

Q Did you review the daily account sheets submitted to Pressman, Frolich and Frost by Loeb Rhoades?

A No.

Q You again didn't think it was necessary?

A That is correct.

(14) Q Apparently in view of the fact you didn't check them you couldn't tell whether or not some of those accounts were in nominee names either, could you?

A It wouldn't show up on any sheet if they were nominees.

Q But you never went further to find out, to inquire whether or not the names listed on the sheet, because in fact you didn't have them, or persons that ordered the stock?

MR. MANDEL: Objection, your Honor. I think Mr. Surgent is cross-examining the witness rather than asking as to the document.

MR. SURGENT: I am inquiring into what type of documentation he received in order to compile this list. I am trying to show this Court there is other documentation, that would further explanation even goes further than this summary that he included from certain papers.

I think if he is going to testify I would like to see all the papers that he used in order to compile this documentation and that is why I think it is incumbent upon the submission if they want to make a prima facie case against me, that they submit the full trading blotters that Mr. Frost used for the trade as principals and the agency trades.

THE COURT: You can ask the witness what documents he used to compile Plaintiff's Exhibit 1.

(15) Q What documents did you use in order to compile Exhibit 1?

A The order tickets representing the actual trade.

Q What order tickets, all of the order tickets on Omni-Rx Systems—

THE COURT: You have to let the witness answer now, you can't argue with the witness and start asking other questions because the court reporter isn't going to get anything.

A Those order tickets reflecting these trades.

Q Just those order tickets that were reflected in these trades?

A The unauthorized trades. The other trades may have been authorized.

Q May have been?

A They were authorized.

Q But you didn't look into them to find out whether they were or were not, is that correct?

A I didn't ask each individual person whether they authorized the unauthorized trades, that would be reflected by the fact that they were paid for.

Q But isn't it true that you might have had a situation—

THE COURT: Just a minute. That too is arguing with (16) the witness and the only proper question on voir dire to this witness is what documents he used to compile that. You can cross-examine him later but right now we are talking about the admissibility of this document.

MR. SURGENT: I will limit the questioning, your Honor.

Q Were there any other documents that you used?

A The confirmations, the letters of complaint, and also the testimony of Mr. Iannelli.

Q Was there anything else?

A The account statements and basically that is it.

Q Did you interview any of the people listed on your exhibit Plaintiff's 1?

A No.

Q You never did?

A No.

Q To your knowledge did anyone in your office interview any of the people?

A To my knowledge, no.

Q Do you have copies of the documentation you just referred to with you in Court today?

A Yes.

. . .

(Commencing at page 26, line 2)

Q Did Mr. Wagenti ever have an account at Pressmon, Frolich and Frost while you were employed there?

A Yes.

Q Did you ever place any orders in this account for the purchase of the common stock of Omni-Rx?

A Yes.

Q Mr. Iannelli, did you ever place any orders for the purchase of Omni-Rx stock in Mr. Wagenti's account without authorization?

A Yes.

Q Do you recall how many trades that you placed in that account without authorization?

A I believe there were three different transactions.

Q Can you recall the dates of those transactions?

A I believe the initial one was September 13, September 17 and September 20.

Q Do you recall how many shares each of those transactions was?

A I can't recall the exact amount.

Q I show you Plaintiff's Exhibit 1 in evidence and ask you if this helps refresh your recollection at all?

(27) A Yes, it does.

Q Could you tell us the size of the trade entered in Mr. Wagenti's account on September 13?

A Three thousand shares at eight and a half.

Q September 17.

A Three thousand seven-hundred fifty shares at nine and seven-eighths.

Q What about September 20?

A Seven thousand shares at 10 and a half dollars.

Q Were confirmations mailed out to Mr. Wagenti as a result of those orders?

A To the best of my knowledge they were. That was the standard operating procedure.

Q Did Mr. Wagenti ever indicate he knew of any of these trades?

A Yes.

Q When was this?

A On September 18, Mr. Wagenti called me.

Q Where were you at the time?

A I was in my office.

Q Could you tell us what you said to Mr. Wagenti and what Mr. Wagenti said to you at that time?

A Mr. Wagenti called me up and acknowledged that he had received confirmations and questioned me as to the confirmation (28) and we had a discussion as to his assumption and his desire to receive the stock into his account, to pay for it, and Mr. Wagenti decided that he would not make a decision at that point and he would wait to make his decision as to paying for the stock or not to pay for it.

Q Mr. Iannelli, did Mr. Wagenti ever pay for the stock?

A No.

Q Did he indicate to you at that time how many confirmations he had received?

A Yes.

Q How many?

A He told me he received a confirmation from the initial transaction on September 13 and the subsequent transaction on the 17th.

Q Do you know what, if anything, ultimately happened to the shares that were purchased for Mr. Wagenti's account but were never paid for?

A They were assumed by another party.

Q Who was that other party?

A Mr. John Surgent.

Q Did you ever speak with Mr. Surgent concerning such adoption or were you ever present at such a conversation?

A I don't quite understand the question.

(29) Q Where you ever present at a conversation whereby the assumption of those trades by Mr. Surgent was discussed?

A Yes.

Q When was that?

A I believe it was September 19 or—September 18 or 19.

Q The same date as the Wagenti phone conversation?

A Yes, either later that afternoon or the following day.

Q Was that conversation in person or over the phone?

A Via the telephone.

Q Can you tell us who was on the telephone?

A Mr. Wagenti was on the phone and Mr. Frost was on the phone also.

Q Which end of the phone were you on?

A I was in Mr. Frost's office.

Q How did you know it was Mr. Wagenti on the other end of the phone?

A It was a speaker phone as opposed to a regular telephone, so I had a chance to hear the conversation.

Q Had you spoken to Mr. Wagenti prior to that date on the telephone?

A Yes. As I stated, I don't recall if that phone call was that afternoon or was the subsequent date so if that (30) is the day I had spoken to him earlier—

Q Had you ever spoken to Mr. Wagenti prior to that date?

A Yes, I am sorry.

Q Did you recognize the voice as being that of Mr. Wagenti?

A Yes. He identified himself also.

Q Anyone else present in the room with you and Mr. Frost at that time?

A I can't recall. Mr. Edward Bohn may have been in during part of that conversation but I can't recall.

Q Could you relate the substance of that conversation to us?

MR. SELLINGER: I object to any conversation unless Mr. Sargent was present during the conversation. This is a hearsay conversation entirely as it applies to my client.

MR. MANDEL: We are discussing about the assumption of trades, which anti trades by Mr. Sargent and as Mr. Iarnelli will testify in just a moment, during that same phone conversation Mr. Sargent actually got on the phone. This is background up information up to that time that Mr. Sargent gets on the phone.

MR. SELLINGER: It is still a conversation between Mr. Wagenti and Mr. Frost and there is no testimony Mr. (31) Sargent was present.

THE COURT: But subsequently he got on the phone.

MR. SELLINGER: I won't object to the conversation when Mr. Surgent got on the phone but anything that occurred without any evidence that Mr. Surgent could hear the conversation and comment on the conversation, I would object.

THE COURT: I think if part of the conversation comes in the other part comes in. Overruled.

Q Could you tell us what the substance of the conversation was, Mr. Iannelli?

A Basically Mr. Wagenti called Mr. Frost to disavow and disacknowledge the purchase of the previously mentioned securities and transactions.

He stated that the trades were done in error originally and they were intended for the account of Mr. Surgent.

Q Did Mr. Wagenti say anything else or Mr. Frost say anything else?

A I believe Mr. Frost acknowledged that fact and then had a discussion, a subsequent discussion with Mr. Wagenti and Mr. Surgent as to the mechanics and as to the arrangements and mode of payment and when payment might come.

Q Mr. Iannelli, did Mr. Surgent subsequently take part in that telephone conversation?

(32) A Yes.

Q Was it a different telephone conversation or the same?

A No, the same telephone conversation.

Q Prior to that date had you ever spoken with Mr. Surgent on the telephone before?

A Yes.

Q Did you recognize the voice as being that of Mr. Surgent?

A Yes.

Q What, if anything, did Mr. Surgent say in that telephone conversation?

A He concurred with Mr. Wagenti's statement that the trades in fact were originally placed in error and were supposed to be for his account, and basically, that was it.

As I stated before, they discussed method of payment and the time of payment, things of that nature.

Q Did there come a time that Mr. Surgent was present in the offices of Pressman, Frohlich and Frost?

A Yes.

Q Do you recall approximately when that was?

A The initial date was September 26, 1973.

Q Was he present alone that day or did he come with anyone?

(33) A No, he came with Mr. Wagenti.

Q Did you meet with Mr. Surgent that day?

A Yes.

Q Where did you meet with him?

A Initially in the conference room of Pressman, Frohlich and Frost as 1 State Street Plaza where I had my office.

Q Anyone else present besides yourself and Mr. Surgent?

A And MR. Wagenti.

Q What was discussed at that particular day?

A We discussed the assumption of three transactions regarding the purchase of Omni-Rx Health Systems, of Mr. Surgent's assumption of these transactions.

Q Which transactions are these?

A The transactions which transpired on September 7 and I believe September 8 of 1973.

Q I show you once again Plaintiff's Exhibit 1 in evidence and ask you if this will refresh your recollection as to the discussion that you had with Mr. Surgent and Mr. Wagenti, on September 26?

A Yes, sir, it does.

Q Was there discussion about taking over the particular trade?

(34) A Yes.

Q Which trades were those?

A The three transactions, the first being 100 shares at 6 and $\frac{3}{4}$, that transaction took place on September 7, originally in the account of Mr. Anthony Strammiello and also a subsequent transaction on September 10, 600 shares at 7 and $\frac{1}{2}$ in Mr. Strammiello's account.

Also a thousand shares on that same date at 7 and $\frac{1}{2}$ for the account of Mr. James R. Buck.

Q Did you then discuss the fact that Mr. Surgent would be taking over trades which had occurred earlier in the month?

A Yes.

Q Did you tell Mr. Surgent why he was taking over these trades or did he ask you why?

A No, I did not tell him and he did not ask.

Q Were there any conditions attached to his assuming these transactions?

A Yes.

Q What conditions?

A He wanted the securities liquidated that day.

Q Anything else?

A And that I give him written confirmation of such a sale.

(35) Q Was this the usual procedure in the purchase and sale of securities as far as you were concerned?

A No.

Q Did you in fact give him a written confirmation?

A Yes, I did.

MR. MANDEL: Would you please mark this as Plaintiff's Exhibit 4 for identification.

(Plaintiff's Exhibit 4 marked for identification)

Q I show you this document which has just been marked as Plaintiff's Exhibit 4 for identification, Mr. Iannelli.

Can you tell us have you ever seen that document before?

A Yes, I have.

Q When did you see it?

A The first time I saw it was on September 26, 1973.

Q What is that document?

A A written confirmation signed by myself which states that Mr. Surgent is assuming the transaction of a prior

date and guarantee that the stock was sold and also be guaranteed that he would receive the proceeds from such a sale.

Q Whose idea was including the guarantee of payment (36) on the sale of securities?

A Mr. Surgent's.

Q Was that your usual experience, usual course of business as well?

A No, it wasn't.

Q Who prepared this document, Mr. Iannelli?

A I prepared it.

Q Did you in fact type the document?

A I originally wrote it in longhand and then typed it.

Q Who devised the language that would appear in this document?

A Mr. Surgent.

Q Did he write it out?

A No, he dictated it to me.

Q He dictated it to you and you wrote it out in longhand?

A Yes.

Q What did you do?

A I proceeded to type it.

Q Do you know where the original of this document is?

A No, I don't.

Q When was the last time you saw the original?

(37) A September 26, 1973.

Q What happened to it?

A I gave it to Mr. Surgent.

Q Is this letter accurate, Mr. Iannelli?

A No, it isn't.

Q In what way it it inaccurate?

A In the initial paragraph, if I can recall, it says because of a computer error your confirmation will follow in a few days. There was in fact no computer error.

MR. MANDEL: Your Honor, I offer Plaintiff's Exhibit 4 for identification in evidence?

THE COURT: Any objection?

MR. SURGENT: No objection, your Honor.

(Plaintiff's Exhibit 4 for identification received in evidence.)

Q Did there ever come a time, Mr. Iannelli, where subsequent letters of confirmation were prepared?

A Yes.

Q Do you recall when those documents were prepared?

A I believe the next one was September 28, Friday.

Q Any others?

A Yes.

Q When were they prepared?

A To the best of my recollection October 1 the (38) following Monday, and two documents on October 2, the following Tuesday.

MR. MANDEL: May I have these four documents marked?

(Plaintiff's Exhibits 5, 6, 7 and 8 marked for identification.)

Q Mr. Iannelli, I show you what has been marked as Plaintiff's Exhibits 5, 6, 7 and 8 and ask you if you have ever seen these documents before?

A These are copies of documents I have seen before.

Q You have seen these before?

A Yes.

Q When did you see those documents? Specify with respect to each exhibit, please.

A You don't have them in chronological order but exhibit 5 I saw on October 2.

Exhibit 6 I saw for the first time on October 1.

Exhibit 7 I saw for the first time on October 2nd.

Exhibit 8 I saw for the first time on October 2nd.

Q Mr. Iannelli, are you certain that you saw Exhibit 5 for the first time—

A I made a mistake. Exhibit 5 I saw on September 28. That is my error.

Q But the other ones you saw on the date specified?

A Yes, I am sorry.

(39) Q Do you know who prepared those documents?

A Yes.

Q Who did?

A I did.

Q What are those document?

A These are written confirmation prepared by myself of the assumption of transactions by Mr. Surgent.

Q Were they prepared at anyone's direction?

A Yes.

Q Whose direction?

A Mr. Surgent's.

Q How was the language derived for those letters?

A It was dictated to me.

Q By whom?

A Mr. Surgent.

Q Are those letters accurate?

A No, they are not.

Q In what way are they inaccurate?

A All inaccurate for the same reason, being that the initial paragraph states that a computer error is the reason that the confirmations were not received by Mr. Surgent, and that is not correct.

• • •

(Commencing at page 42, line 3)

THE COURT: Yes, you may have a continuing line of objection.

Q Mr. Iannelli, could you tell us what Mr. Wagenti said?

A I can't verbatim but he stated it to the best of my recollection "How many shares of this stock aren't paid for?" Or he said "How many shares of this wood is around?"

Q Do you recall when he made this statement?

A To the best of my recollection, September 20.

Q Was anyone else present?

A September 28, I am sorry.

Q Was anyone else present at the time he made this statement?

A I believe Mr. Sargent was in the room.

Q Did there ever come a time that Mr. Sargent made a similar reference?

A Yes. On the following Monday or Tuesday, which would have made it October 1 or 2.

Q What did Mr. Sargent say?

A He said something to the effect "We are going to clean up all of this stock" or "Clean up all of this wood."

Q What does this term wood refer to, Mr. Iannelli?

A To my knowledge, my definition of it would be that (43) it is stock which was unauthorized.

Q Is that a term commonly used in the securities industry?

A A slang expression which is—yes, commonly used.

Q Did there ever come a time that Mr. Sargent made any requests for money or checks from you?

A Yes.

Q When was this?

A As I recall October 3, in the evening.

Q Where were you at the time?

A In Mr. Wagenti's car.

Q Was Mr. Wagenti there?

A Yes.

Q Were you just sitting in the car or were you on your way some place?

A We were on our way home from the office to my home.

Q What office?

A Pressman, Frohlich and Frost.

Q What did Mr. Surgent say?

A He asked for a bank draft check.

Q Did you ask him why?

A Originally I didn't.

Q Did he ever tell you why?

A Yes.

(44) Q What did he say?

A He stated that since he was due money from a transaction from Loeb Rhoades on October 3, and Loeb Rhoades—in the amount of approximately \$36,000—Loeb Rhodes saw fit not to give him such moneys and that he wanted a check from me.

Q For what purpose?

A To deposit into his account.

Q Did he say why he needed the check from you?

A He said that he had some outstanding checks and this would enable him to make those other checks available.

Q Do you know what outstanding checks he had?

A I can only make an assumption that they were checks for a payment of securities.

Q Had Mr. Surgent in fact given any checks to Pressman in the preceding few days.

A Yes.

Q Mr. Iannelli, did you in fact give Mr. Surgent a check?

A Yes.

Q Were there sufficient funds in the account to cover that check?

A No.

Q On what account was it drawn?

(45) A RTI Enterprises.

Q What is RTI?

A A corporation which is now defunct in which I was the sole stockholder.

Q Did you inform Mr. Surgent that there were in fact no funds in the account to cover the check?

A Yes.

Q Did he say anything in response to that?

A He said it wasn't necessary there be funds.

Q Did he say why.

A He said that the check as it stood would enable him to make some other checks good.

Q Did he say how that would work?

A That he had an arrangement with his bank where that was the procedure.

Q Did he make any reference to uncollected funds?

A I believe he may have mentioned uncollected funds in that conversation.

Q Do you recall what he said in that connection?

A That his bank would clear against uncollected funds.

Q Mr. Iannelli, do you know whether Mr. Surgent was aware in early September of the price of Omni-Rx stock?

A I gave him a number of quotations in early (46) September. It is the only way I would know if he was aware.

Q Did you give him continuing quotations or quotes on one particular day?

A No, any time that Mr. Surgent called and I believe he called four or five times between the early part of September and the date on which we had our first—we did business, I gave him quotations every day that he might call or I might call him.

Q Mr. Iannelli, if the unauthorized orders which you already discussed were not in fact put into Mr. Surgent's account, what would have happened to them?

A The stock would have been sold out into the open market.

Q What would have happened if the stock had been sold out into the open market?

A Someone would have bought it.

Q Would it have had any effect on the market price of the stock?

A Well, if there wasn't a buyer willing to pay the price at which the stock was to be sold, then the buyer would have paid a lower price and it would have caused the stock to decrease in price.

Q What effect if any, would a depressed price have on your unauthorized orders?

(47) A It would not be beneficial.

Q In what way wouldn't it be beneficial?

A It would make the recipient of the unauthorized trade more reticent, more hesitant to pay for the securities if they were at a depressed price.

MR. MANDEL: At this time the Commission has no further questions for Mr. Iannelli.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. SURGENT:

Q Mr. Iannelli, where were you employed from May 1, 1973 through October 3, or 5, 1973?

A Pressman, Frohlich and Frost.

Q In what capacity were you so employed?

A Registered representation.

Q What is Presman, Frohlich and Frost?

A A broker-dealer, a member of the New York Stock Exchange, a member of the American Stock Exchange and various other exchanges.

Q Who was the president if you know of that firm during that period from May through October?

A When I was employed there it was Mr. Howard Frost.

(Commencing at page 60, line 3)

THE COURT: The answer to the first one was no, is that right? All right. Rephrase the question.

Q Didn't you tell Mr. Surgent that he could make a profit on the securities and if he would pay for them, you were tired of Mr. Frost reaping the benefits of the lost trades?

A I told Mr. Surgent stock was available underneath the present market price and that if he didn't purchase it, someone else would, and if another account didn't buy it would go to the firm's account, and, naturally, they would have the beneficial interest in any depressed stock.

Q In other words, if Mr. Surgent didn't buy the stock the stock would have been sold, either would have been sold to somebody else or the stock would have been liquidated by the account, is that correct, by the firm?

A Or the firm would assume the stock, yes.

Q Or the firm would assume the stock, is that right?

A Yes.

Q Now, if you know, and I want an approximation, you have indicated that you sold 105,000 shares of stock. How many shares of stock were in the Pressman, Frohlich account if you can tell the court?

A If I may have a little help, you mean by Pressman,
(Commencing at page 88, line 3)

Q At any time prior to September 26 until this particular date, had you personally ever told Mr. Surgent that these were unauthorized trades that he was buying?

A No. I never had stated to Mr. Surgent, nor had he asked me up to October 1 as to the derivation of the origin of these transactions. I made him cognizant via confirmations, written-computerized confirmations from Loeb Rhoades.

Q But you never overtly came to Mr. Surgent and said, "But these securities. These people never ordered the stock, and you can take over the trade and make money on it." You never said to him, isn't that true?

A As I stated, I never said that to him and he never inquired as to the origin of the confirmation.

Q When was the first time you met Mr. Surgent?

A The first time I met Mr. Surgent was back, to the best of my recollection, in late '71 or early '72, when I met him socially and very briefly through Mr. Wagenti, who, as I previously stated, was an employee of M. Bernstein Securities.

Q And where did you meet him?

A In, I believe it was, Mr. Surgent's office.

(Commencing at page 111, line 2)

MR. MANDEL: Your Honor, the Commission calls Howard Frost to the stand.

HOWARD FROST, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MANDEL:

Q Mr. Frost, during September of 1973, you were employed by Pressman, Frohlich & Frost?

A Yes.

Q In what capacity?

A I was president.

Q Did there ever come a time, Mr. Frost, when you met a man named John Surgent?

A Yes.

Q Did you ever have occasion to speak with him on the phone?

A Yes.

Q Do you recall when for the first time you spoke with Mr. Surgent?

A It was shortly before I met him, which would be somewhere around September 20, around that time.

THE COURT: Will you please keep your voice up?

THE WITNESS: Yes.

(112) MR. SURGENT: I did not hear that, your Honor.

THE COURT: Let the reporter read it back. And please throw your voice so we do not have to repeat every answer here.

(Record read.)

Q And, Mr. Frost, do you recall the circumstances under which that conversation took place?

A Yes.

Q Was that conversation on the telephone?

A That is correct.

Q Who was on the phone with you on that particular occasion?

A (No response.)

Q Were you on the phone?

A I was on the phone, right.

Q Was Mr. Surgent on the phone?

A You want all the parties to that call?

Q If there were any other parties.

A Yes, there were a number of people there. The actual call was made originally to Mr. Wagenti. Present with me were Edward Bond and Ralph Iannelli.

Q Who is Edward Bond?

A Edward Bond at that time was vice president, corporate secretary, director.

(113) Q Of what?

A Director of the company.

Q Of Pressman?

A That's correct. And director of compliance.

Q Could you tell us what was said during that telephone conversation?

A Yes. The call was initiated by me after Ralph had indicated to me that--Ralph Iannelli had indicated that Mr. Wagenti had not in fact wanted the Omni-Rx stock, but that it really was for the account of John Surgent. In other words, to make such a switch like that I wanted to personally speak to both of the people involved to ascertain that in fact Mr. Wagenti did deny purchasing the stock, and subsequently I did get Mr. Surgent on the phone and Mr. Surgent did at that time acknowledge the fact that the shares of Omni-Rx should in fact have been in his account.

Q So in that phone conversation did Mr. Wagenti deny that those were his trades?

A Yes.

Q And Mr. Surgent acknowledged his adoption of those trades?

A Yes, he did.

Q Did there come a time when you saw Mr. Surgent in the offices of Pressman?

(114) A Yes.

Q Did you see him there more than once?

A Yes, I did.

Q Do you recall how often you saw him at the offices of Pressman?

A Almost every day. I would say at least eight or more days out of the last ten days the stock was traded.

Q Was he alone or was he accompanied by anyone?

A In almost all cases he was with Mr. Wagenti.

MR. MANDEL: No further questions.

CROSS EXAMINATION

BY MR. SURGENT:

Q Mr. Frost, you have indicated that you were president of Pressman, Frohlich & Frost between May and October of '73, is that correct?

A That is right.

Q What were your official duties at that time?

A I had quite a large range of duties. I was in charge of trading, both listed and unlisted. I had overall responsibility for other areas, such as the syndicate areas, underwriting, research, sales, branch office operations.

(Commencing at page 132, line 2)

A Yes, I do.

Q How long have you known Mr. Wagenti?

A Approximately about three years now.

Q During September of 1973 do you know where Mr. Wagenti maintained his offices?

A Mr. Wagenti was a client of our office and he rented an office in our office building on the second floor.

Q When you say "a client of our office," could you elaborate on that, please?

A Of the Surgent & Surgent law firm in Clifton, New Jersey. My brother and I were partners at that time in the practice of law.

Q And during September of 1973 he was a client of Surgent & Surgent, Mr. Wagenti was?

A Well, we did some work for him. We represented him. I use the term "client" to refer to the fact that we represented him at a certain period of time.

Q And did you represent Mr. Wagenti in matters prior to September of 1973?

A I think we formed a corporation for him.

Q What was the name of that corporation?

A The Wage Corporation. The first four letters of Mr. Wagent's last name.

Q Did you ever represent Mr. Wagenti, or Wage (133) Corporation, in connection with any dealings with Omni-Rx Health Systems, Inc.?

A No.

Q Did you ever review any documents in connection with his dealings with Omni-Rx Health Services, Inc.?

A Mr. Wagenti, if I can fill in a little background for you—

Q Would you just answer the question, please.

A Would you repeat the question?

Q Did you ever review any documents in connection with Mr. Wagenti's business dealings with Omni-Rx Health Systems, Inc.?

A At one time he was negotiating a finder's agreement with Omni-Rx and he discussed the matter with me one or two times.

Q Was this prior to September of 1973?

A I believe it was.

Q Mr. Surgent, have you in the course of your practice of law practiced any securities law?

A Yes, I have.

Q Would you tell us whether you practiced any securities law prior to September of 1973?

A Yes, I have.

Q Would you tell us in connection with what matters (134) you practiced securities law?

A We represented at one point in time M. Bernstein Securities, which was a broker-dealer in a lawsuit, and I've handled some blue sky regulations in the State of New Jersey, and I've appeared before the Commission once or twice just recently.

Q Representing clients.

A That's correct.

Q Did you ever represent a brokerage firm which was the underwriter in a public offerings?

A At one time we did. The brokerage firm went defunct and they never completed the registration.

Q Did you ever ask Mr. Iannelli, or did he ever tell you, why stock was being offered to you below the market?

A Yes, I did.

Q And what did Mr. Iannelli say to you?

A Well, I presume you want to know what I asked him and then what he said to me.

Q Well, did you ask him why stock was available to you below the market?

A Yes, I did.

Q And did he respond to that inquiry?

A He told me that he was very—he was becoming very successful on the market, he had a lot of customers and (135) that he was handling substantial accounts and that he heard that I was a big trader and that he wanted my business.

THE COURT: Read the question, Mr. Reporter.

(Question read.)

THE COURT: Read the previous question.

(Record read.)

THE COURT: Now read the answer.

(Answer read.)

MR. MANDEL: I move to strike the answer as not responsive.

THE COURT: All right.

A Well, he mentioned to me that certain individuals had not paid for their securities and that I could purchase the stock and make a profit on it.

Q Did he tell you how many individuals had not paid for their purchases?

A No, he had not.

Q Did you ask?

A I didn't inquire, no.

Q Was it a similar situation with respect to all the shares purchased by Surgent & Surgent, London and Premium?

A I believe the representations were made that there was a certain amount of stocks that were unpaid for by customers, that if I would give him New York Stock Exchange (136) business that he would allow me to pick up the trades if I would pay for them and make a profit on them.

Q Thank you.

A That's exactly what he said.

Q Mr. Surgent, are you familiar with the term "wooden ticket?"

A I am now. I wasn't at that particular point in time.

Q Would you please tell us, Mr. Surgent, what the term "wooden ticket" refers to?

A The term "wooden ticket" refers to the fact that there was an order written for stock and that there wasn't a purchaser for the stock.

Q When for the first time did you become familiar with the term "wooden ticket?"

A October 3, the meeting with Mr. Howard Frost and Mr. Ralph Iannelli in their office.

Q Mr. Surgent, do you recall giving testimony in a deposition in a matter known as London Corporation, et al vs. Pressman, Frohlich & Frost, an action filed in the Superior Court of New Jersey?

A That's correct.